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13 TWITCH INTERACTIVE, INC., ERRONEOUSLY  
14 NAMED AS TWITCH INTERACTIVE, INC.  
15 A/K/A TWITCH.TV, INC.

16 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **IN AND FOR THE COUNTY OF SAN FRANCISCO**  
18 **UNLIMITED JURISDICTION**

19 JAMES VARGA,  
20 Plaintiff,  
21 v.  
22 TWITCH INTERACTIVE, INC. a/k/a  
23 TWITCH.TV, INC.,  
24 Defendant.

Case No. CGC-18-564337

**SECOND AMENDED  
CROSS-COMPLAINT**

Dept.: 304  
Judge: Hon. Anne Christine Massullo

Action Filed: February 14, 2018  
Cross-Complaint Filed: May 2, 2018  
Amended X-Comp Filed: October 10, 2018  
Trial Date: None set

25 TWITCH INTERACTIVE, INC.,  
26 ERRONEOUSLY NAMED AS TWITCH  
27 INTERACTIVE, INC. a/k/a TWITCH.TV, INC.,  
28  
29 Cross-Complainant,  
30 v.  
31 JAMES VARGA,  
32 Cross-Defendant.

## INTRODUCTION

1        1. Cross-Complainant and Defendant Twitch Interactive, Inc. erroneously named as  
2 Twitch Interactive Inc. a/k/a Twitch.tv, Inc., (“Twitch”) is the world’s leading service for content  
3 creators to stream broadcasts of gaming-related content as part of a social, interactive  
4 community. Twitch and its broadcasters have been successful because of their efforts in creating  
5 authentic content and experiences for the Twitch community. Twitch shares revenues with select  
6 broadcasters invited to its Partnership Program, which benefits Twitch, the broadcasters, and the  
7 Twitch community by incentivizing and supporting the creation, availability of, and engagement  
8 with, quality content on Twitch. Although Plaintiff and Cross-Defendant James Varga  
9 (“Mr. Varga”) was a successful member of Twitch’s Partnership Program, he began misleading  
10 Twitch personnel and abusing Twitch’s services to scam Twitch and its community for his own  
11 financial gain. In order to protect its users, and to ensure the integrity of its rules and the content  
12 broadcast on its services, Twitch terminated Mr. Varga’s account and partnership with Twitch.

14        2. For approximately a year prior to the termination of his Agreement with Twitch,  
15 Mr. Varga was warned about and received penalties from Twitch for streaming content that  
16 violated his contract with Twitch, Twitch’s Terms of Service and its Rules of Conduct. Above  
17 and beyond his violations of his agreements with Twitch, Mr. Varga lied to Twitch personnel in  
18 order to stream promotions for a gambling website that (1) he had an undisclosed financial  
19 interest in, (2) he used to rig jackpots in his favor against users he gained from Twitch, and  
20 (3) he operated in contravention of the terms of the underlying game’s publisher and, potentially,  
21 in violation of the law. In running these promotions, Mr. Varga not only breached his  
22 contractual obligations to Twitch, but made material misrepresentations to defraud Twitch and  
23 its users. Twitch brings this action in order to seek redress for the harm that these and other  
24 violations by Mr. Varga caused to it and to its relationship with its user community.

## PARTIES

26        3. Twitch is a Delaware corporation with its principal place of business in San  
27 Francisco, California. Twitch is the leading live-streaming video service for video game content  
28 where users broadcast, watch, and discuss video game related content.

1       4. Twitch is informed and believes that Mr. Varga, an individual, is a Nevada citizen  
2 and resident of Las Vegas, Nevada. Mr. Varga is an online personality in the esports and video  
3 gaming community who, under the username “Phantom10rd,” streams live video content, such as  
4 videos of him playing the video game Counter-Strike: Global Offensive (“CS:GO”). Esports,  
5 short for electronic sports, refers to the world of competitive video games. CS:GO is a video  
6 game in which multiple players in different locations, using their own game systems, participate  
7 on screen in a virtual battle between two competing teams.

## **JURISDICTION AND VENUE**

9       5.      Jurisdiction and venue are proper in this Court because Varga's obligations arose,  
10 and breaches and other wrongful acts took place, in San Francisco County, and because the  
11 Agreement between the parties expressly provides that "[a]ny legal suit, action or proceeding  
12 arising out of or relating to this Agreement by a Party shall be resolved by litigation in the courts  
13 located within San Francisco County in the State of California." Ex. 2 § 9.3.

## **FACTUAL ALLEGATIONS**

## A. Varga Enters into Contractual Relationship with Twitch

16        6. On or about November 15, 2012, Mr. Varga registered a new account with  
17 Twitch. In registering his account, Mr. Varga accepted Twitch's then-current September 9, 2012  
18 Terms of Service, which provided in relevant part that "BY REGISTERING FOR,  
19 ACCESSING, BROWSING, DOWNLOADING FROM OR USING THE TWITCH SERVICE,  
20 YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE  
21 BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING ANY  
22 ADDITIONAL GUIDELINES AND FUTURE MODIFICATIONS." The September 2012  
23 Terms of Service are attached hereto as **Exhibit 1**.

24        7. Broadcasters selected to become Twitch partners, and to stream their video  
25 content of and about their game play over Twitch, must also agree to an additional agreement  
26 called the Content License and Base Network Agreement.

27       8.      Effective on or about November 12, 2012, Twitch and Mr. Varga entered into a  
28 Content License and Base Network Agreement (the “Agreement”) whereby Mr. Varga granted

1 Twitch a license to distribute Mr. Varga's Licensed Content,<sup>1</sup> and Twitch granted Mr. Varga a  
2 license permitting him to stream the Licensed Content through Twitch's system. The Agreement  
3 is attached hereto as **Exhibit 2**.

4       9. In the Agreement, Varga represented and warranted that the Licensed Content  
5 would "comply with all applicable laws, rules and regulations" and would "not infringe or  
6 misappropriate the Intellectual Property Rights of a third part[y][sic]." Ex. 2 § 7.2.

7       10. The Agreement also expressly limits the types of content that Mr. Varga, as a  
8 Content Provider, was permitted to broadcast on Twitch:

9              Content Provider represents and warrants that, as applicable, the  
10          Licensed Content (used, broadcast, streamed, distributed, and  
11          otherwise exhibited in accordance with this Agreement), the  
12          Content Provider Websites, and/or the Content Providers Channels  
13          (including all content appearing within):... e) do and will not  
14          include content, and are not and will not be of a subject matter, that  
15          is prohibited by the Content Guidelines described on Exhibit E.  
16          Ex. 2 § 7.2.

17       11. Exhibit E to the Agreement provides the Content Guidelines (the "Content  
18          Guidelines") referred to in section 7.2 of the Agreement. The Content Guidelines expressly  
19          prohibit the following content and subject matter types (among others):

- 20              (a)     "Adult-oriented products or services;" "Salacious products or services or  
21                  other material which would generally be considered obscene or indecent";  
22                  "content that a reasonable person would deem objectionable, indecent,  
23                  vulgar or offensive"
- 24              (b)     "Content which promotes ... illegal activity, mail fraud, pyramid schemes,  
25                  or investment opportunities or advice not permitted by applicable law"
- 26              (c)     "Content which is unlawful, pornographic..."
- 27              (d)     "Content which constitutes hate speech;"
- 28              (e)     "Any other activity that contravenes any applicable laws or regulations  
29                  (including poker, lotteries, gambling products or other wagering activity)."

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<sup>1</sup> Defined in Exhibit A to the Agreement as "any and all videogaming-related content which is  
31          developed, created and/or produced by Content Provider or its players and teams (as  
32          applicable)...." Exhibit 2, at Exhibit A.

1 Ex. 2, at Exhibit E.

2 12. In addition, the Terms of Service prohibited certain conduct. See Ex. 1 ¶ 9.

3 13. On or around April 1, 2014, Twitch and Mr. Varga entered an Amendment (the  
4 "Amendment") to the Agreement, renewing the term of the Agreement for two years.

5 The Agreement thereafter would renew automatically for successive one (1) year renewal terms.

6 The Amendment to the Agreement is attached hereto as **Exhibit 3**.

7 **B. Varga's Streaming of Non-Gaming CS:GO Skin Gambling Content Violated**  
8 **Twitch's Terms of Service and Rules of Conduct**

9 14. In or around September 2015, Mr. Varga began regularly streaming non-gaming  
10 CS:GO skin gambling content during his live-stream broadcasts on Twitch.

11 15. Skins are cosmetic features—designs or patterns that can be superimposed on  
12 screen upon elements of the game, such as a player's equipment or weapon. Although skins can  
13 be purchased or won, and transfers of skins are permitted by CS:GO, a secondary-market place  
14 has developed where these skins can be gambled and cashed out on third-party websites.  
15 Such skin gambling content is not gaming content.

16 16. Valve Corporation ("Valve"), the publisher of CS:GO and owner of Steam, a  
17 video game and in-game item marketplace (e.g., where CS:GO skins can be purchased for in-  
18 game use), does not permit or condone this secondary-market place for skin gambling and cash-  
19 outs with real-world value. Indeed, Valve's Steam Subscriber Agreement, in place as of June  
20 2016, attached hereto as **Exhibit 4**, provides in relevant part:

21 **Restrictions on Use of Content and Services**

22 You may not use the Content and Services for any purpose other  
23 than the permitted access to Steam and your Subscriptions, and to  
make personal, non-commercial use of your Subscriptions, except  
as otherwise permitted by this Agreement or applicable  
24 Subscription Terms....

25 You are entitled to use the Content and Services for your own  
26 personal use, but you are not entitled to: (i) sell, grant a security  
interest in or transfer reproductions of the Content and Services to  
other parties in any way, nor to rent, lease or license the Content  
27 and Services to others without the prior written consent of Valve...  
or (iii) exploit the Content and Services or any of its parts for any  
commercial purpose, except as expressly permitted elsewhere in  
28 this Agreement (including any Subscription Terms or Rules of

1 Use).

2 Ex.4, ¶ G.

3 17. Twitch's Rules of Conduct – which are incorporated into the Terms of Service  
4 that Mr. Varga agreed to on November 15, 2012 (*see ¶ 6*) – list behaviors that are prohibited,  
5 violation of which could lead to suspension of a user's account or channel. The Rules of  
6 Conduct in effect from November 20, 2015 through December 30, 2016 (attached hereto as  
7 **Exhibit 5**) likewise provided that “[a]ll content that is neither gaming-related nor permitted  
8 under the rules for Twitch Creative Conduct is prohibited from broadcast.” CS:GO skin  
9 gambling content is not considered gaming or “Creative” content, and therefore users and  
10 partners, like Mr. Varga, were prohibited from broadcasting it on Twitch under the Rules of  
Conduct at that time.

11 18. Mr. Varga knew that non-gaming CS:GO skin gambling content was not  
12 permitted. Twitch is informed and believes that Mr. Varga was notified on or around  
13 September 28, 2015 that his streaming of non-gaming CS:GO skin gambling content was not  
14 permitted. Mr. Varga was again notified of his CS:GO skin gambling content violations in April  
15 and May of 2016. Twitch received notice of Mr. Varga’s fifth violation of Twitch’s nongaming  
16 content rule on June 1, 2016.

17 19. On June 22, 2016, Twitch suspended Mr. Varga’s account after Mr. Varga  
18 committed his *ninth* violation in the span of two months. His violations included the streaming  
19 of non-gaming CS:GO skin gambling content, as well as the streaming of sexually suggestive  
20 content, content involving self-harm, and content involving racist symbols, all of which are  
21 prohibited under Twitch’s then-current Terms of Service (attached hereto as **Exhibit 6**) and  
22 Rules of Conduct. *See Ex. 6 ¶ 13 (prohibiting “Content that is unlawful... obscene,  
23 pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity  
24 rights, abusive, inflammatory, fraudulent or otherwise objectionable.”); Ex. 5 (prohibiting “hate  
25 speech or other harassment,” “pornography and other sexually explicit conduct,” and “self-  
26 destructive behavior”).*

27 20. As a result of these numerous infractions, Twitch questioned Mr. Varga’s  
28 willingness and ability to abide by the Terms of Service and Rules of Conduct it had in place to

1 protect its users. In the year leading up to his termination, Twitch documented over 15 different  
2 violations by Mr. Varga of its Terms of Service and/or Rules of Conduct, with more than *ten*  
3 occurring in his last month. Upon receiving a temporary suspension for one of these violations  
4 leading to the termination of his account a month later, Mr. Varga joked about the suspension  
5 and used it to generate more publicity for himself. Twitch also received an extraordinarily high  
6 number of reports from users raising concerns about Mr. Varga's broadcasting.

7       21. After numerous warnings and months of conversations with Twitch personnel  
8 about his conduct, Mr. Varga engaged in a day-long CS:GO skins giveaway promotion on his  
9 Twitch channel that deliberately and undeniably violated Twitch's Terms of Service and Rules  
10 of Conduct. The giveaway, more fully described below, entailed a multi-hour stream of  
11 unlawful, fraudulent and objectionable, non-gaming skin gambling content.

12       22. Twitch's applicable terms, rules and guidelines made clear that any illegal,  
13 fraudulent, misrepresentative, wagering or otherwise objectionable (according to Twitch's  
14 judgment) content was prohibited, and Twitch specifically prohibited content that violates the  
15 terms of service or user agreements of third-parties, such as Valve's terms, which prohibit third-  
16 party, secondary-market CS:GO skin gambling websites. Mr. Varga's CS:GO skin giveaway  
17 promotion violated these terms, rules and guidelines. *See, e.g.,* Ex. 6, ¶ 13 (Terms of Service  
18 prohibit unlawful, fraudulent, and otherwise objectionable content and use of Twitch Service for  
19 any illegal purpose); Ex. 5 (Rules of Conduct prohibit "content or activity that disrupts,  
20 interrupts, harms, or otherwise violates the integrity of Twitch services or another user's  
21 experience," *including misinformation and defrauding others.*); Ex. 2, at Exhibit E (Content  
22 Guidelines prohibit content which promotes illegal activity, along with lotteries, gambling  
23 products, "or other wagering activity.").

24           **C. Varga Made Affirmative Misrepresentations and Omitted Material  
25 Information about his \$100,000 CS:GO Skin Giveaway Promotion**

26       23. Despite receiving notice of his many non-gaming and other content violations,  
27 and despite his account being suspended that week, on June 25, 2016, Mr. Varga conducted a  
28 CS:GO skin giveaway promotion on his Twitch channel that directed users to a third-party skin

1 gambling website in which Mr. Varga had an undisclosed ownership interest, and which he used  
2 to scam Twitch and its user community for his own financial gain.

3       24. Upon information and belief, on or around June 22, 2016, Mr. Varga informed  
4 Mr. Jason Babo, Partnerships Manager, Development at Twitch, through a Skype communication  
5 that Mr. Varga had an important stream he was preparing for on June 25th. Specifically, Mr.  
6 Varga sent Mr. Babo a link to a promotional video, which he had posted on YouTube on or  
7 around the same date, June 22nd, showing that he would be running a “\$100,000 giveaway . . .  
8 on Twitch.tv” on June 25th.<sup>2</sup> What he did not communicate to Twitch when he forwarded the  
9 video, was that CSGOShuffle was a third party website (with no age gate) designed for gambling  
10 where he would resell skins lost by users in the gambling scheme for his own personal  
11 profit. Furthermore, he did not disclose his financial interest in CSGOShuffle, either in the video  
12 itself or in his communications with Twitch prior to or during the promotion.

13       25. During the month preceding the giveaway, Mr. Varga communicated with Twitch  
14 personnel on multiple occasions expressing remorse for (while minimizing) his prior non-  
15 compliant conduct, claiming that his non-compliant conduct was not intentional, but rather the  
16 result of his misunderstanding of the rules, and at the same time promising Twitch personnel that  
17 he intended to comply with the rules going forward, and *not* to “cheat the system.” Not only  
18 were his promises that he intended to reform his conduct and follow the rules – and, in particular,  
19 to conduct his giveaway promotion in compliance with the rules – false, but he omitted that the  
20 promotion would be on a third-party gambling site and that he had an interest in that site. For  
21 instance, upon information and belief:

- 22           • On or about May 27, 2016, Mr. Varga stated to Mr. Babo over a Skype call that  
23                   he was going to be running a contest but “knows the rules,” implying that the  
24                   promotion would be rule-compliant.
- 25           • On or about June 1, 2016, in another Skype call with Mr. Babo, Mr. Varga  
26                   apologized for prior violations, claimed he wanted Twitch to know he was not

27  
28       

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<sup>2</sup> See PhantomL0rd, \$100,000 Giveaway, YOUTUBE.COM,  
https://www.youtube.com/watch?v=ND8jTTU2tAY (published June 22, 2016).

trying to “cheat the system” in any way, and promised to be more “on top of it” going forward.

- On or about June 22, 2016, Mr. Varga wrote on Discord, a private, gaming-related chat channel, “i asked twitch so i wouldnt [sic] get anymore subs/resubs till the 25th LOL,”<sup>3</sup> implying that he let Twitch ban him to drive more hype for his giveaway on the 25th. On that same day, in a Skype conversation with Mr. Babo, Mr. Varga claimed that he was joking, and did not intend a private statement he made on Discord to be shared widely. He also falsely promised to clarify with his followers that he had violated Twitch’s Terms of Service (and did not just “let” Twitch ban him).
  - On or about June 25, 2016, in a Skype call with Mr. Babo, Mr. Varga stated that his giveaway was not gambling activity and that he was not doing anything intentionally to break the rules.

These representations were false, and meant to mislead Twitch so that Mr. Varga could run his lucrative giveaway and continue to use Twitch's services, including access to Twitch's broad user community, for the improper purpose of promoting his third-party skins gambling website.

26. In reliance on Mr. Varga’s false representations about his intention not to cheat the system, his misunderstandings of the rules, his remorse for his prior improper conduct, and the important stream he had been planning for June 25th, Twitch did not prohibit Mr. Varga’s giveaway. Mr. Varga’s suspension ended on June 25th and Mr. Varga was able to stream the giveaway as planned.<sup>4</sup> In other words, through his false promises and misleading misrepresentations to Twitch on May 27, June 1, June 22 and June 25, 2016, Varga induced Twitch to enable him to run the giveaway using his Twitch channel.

<sup>3</sup> “LOL” is an acronym for “laugh out loud.”

<sup>4</sup> Twitch's Terms of Service permit users to stream promotions, but note that users are "solely responsible for all aspects of" any promotions carried out on Twitch, including "for ensuring that you [the broadcaster] and any Promotions comply with any and all applicable local law obligations and restrictions." Ex. 6, ¶ 11(f).

1       27. On June 25, 2016, Mr. Varga ran his CS:GO skins “giveaway” promotion  
2 continuously throughout the day on his Twitch channel, and purportedly gave \$100,000 worth of  
3 free CS:GO skins exclusively to subscribers to his Twitch channel by referring those subscribers  
4 to the third-party skin gambling website, CSGOShuffle.

5       28. Twitch is informed and believes that at all relevant times CSGOShuffle was a  
6 Nevada corporation, registered under the name Phantoml0rd, Inc., and owned at least in part by  
7 Mr. Varga. CSGOShuffle was a secondary-market skin gambling website that enabled users to  
8 gamble CS:GO skins by entering them into lottery jackpots (unskilled gambling activity) and to  
9 bet on the outcome of CS:GO games in which Mr. Varga participated. The CSGOShuffle  
10 jackpot could be cashed out for real-world currency.

11       29. Despite the name, CSGOShuffle was not affiliated with Valve, and Valve  
12 confirmed its opposition to the secondary-market for skin gambling websites, such as  
13 CSGOShuffle. Valve announced that any relationship with third-party skin gambling websites is  
14 prohibited under its Application Programming Interface (API) and User Agreements. The  
15 announcement, attached hereto as **Exhibit 7**, stated:

16           We'd like to clarify that we have no business relationships with  
17 any of these sites. We have never received any revenue from  
18 them. And Steam does not have a system for turning in-game  
19 items into real world currency.... Using the OpenID API and  
making the same web calls as Steam users to run a gambling  
business is not allowed by our API nor our user agreements.  
20 We are going to start sending notices to these sites requesting they  
cease operations through Steam, and further pursue the matter as  
necessary.

21       30. Twitch also released a statement reminding its users that pursuant to its Terms of  
22 Service, Twitch prohibits users “to stream content that breaks the terms of service or user  
23 agreements of third-parties.” The statement is attached hereto as **Exhibit 8**.

24       31. Although Mr. Varga had multiple conversations with Twitch personnel about his  
25 planned June 25th giveaway, Mr. Varga never told anyone at Twitch that the giveaway would be  
26 conducted through a secondary-market skin gambling website, nor that he had an ownership  
27  
28

1 interest in that website. He therefore misrepresented his secondary<sup>5</sup> financial interest in the  
2 giveaway he was promoting through Twitch's services.

3       32. Mr. Varga also misrepresented his confusion about the rules on nongaming  
4 activity and his intentions to reform his conduct and not "cheat the system." In fact, Mr. Varga  
5 intended to flout the rules and could not have thought his giveaway complied with Twitch's  
6 terms and rules. The giveaway was deliberately designed to cheat the system and to use Mr.  
7 Varga's access to Twitch's services and user base to perpetrate a lucrative internet scam. Twitch  
8 is informed and believes that Mr. Varga used his ownership interest in CSGOShuffle to rig  
9 results in his favor using data generated by a CSGOShuffle algorithm to predetermine the  
10 outcome of the skin lottery jackpots.<sup>6</sup> Mr. Varga would also frequently request that a co-owner  
11 or operator of CSGOShuffle, Joris Duhau, deposit skins into Mr. Varga's account so Mr. Varga  
12 could gamble with "in-house" currency and promote CSGOShuffle through his giveaway.

13       33. Skype conversation logs between Mr. Varga and Mr. Duhau that were published  
14 online in or around July 2016 show that Mr. Varga was requesting that Mr. Duhau rig jackpot  
15 outcomes in Mr. Varga's favor and asking for free skins so that Mr. Varga could run promotions  
16 on his Twitch channel. For example, Mr. Varga wrote to Mr. Duhau:

- 17                     (a) "so give me skins so I can advertise to 26,000+ people."
- 18                     (b) "need some help winning a few rounds lost a 10k one."
- 19                     (c) "I'd like to fail snipe a round tell me when the % is low."
- 20                     (d) "mind helping me win a few rounds?"<sup>7</sup>

21       34. Mr. Varga was thus using his undisclosed ownership in CSGOShuffle to rig the  
22 outcome of jackpots he was promoting to subscribers of his Twitch channel. He was then using

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23       <sup>5</sup> Mr. Varga would have a financial interest in any giveaway because he was paid a percentage of  
24 the subscriptions to his channel, but this giveaway was additionally designed to attract Twitch's  
users to a secondary website owned by Mr. Varga.

25       <sup>6</sup> An automated system on CSGOShuffle would pick a percentage that it would not disclose to  
26 the participants to determine the winner of a given jackpot. For example, if the percentage on a  
jackpot was 50 percent, and its total size was \$1,000 in skins, then the person who deposited the  
27 skin that pushed the value of that jackpot past the \$500-mark would be selected as the winner.

28       <sup>7</sup> See, e.g., Will Green, *CSGOShuffle Chat Logs Illuminate Inner Workings Of Skin Gambling*  
Website, The Lines, (July 20, 2015), <https://www.thelines.com/csgoshuffle-phantomlord-joris-chat-logs-skin-gambling/>.

1 his rigged jackpot winnings to further promote CSGOShuffle on Twitch. Not only did the  
2 giveaway itself violate multiple terms in the Agreement, Terms of Service and Rules of Conduct  
3 (Exs. 2, 5, 6), it also flatly contradicted the false promises and assurances Mr. Varga gave Twitch  
4 to be able to run the giveaway as planned on June 25th.

5           **D.       Mr. Varga's Misrepresentations, Omissions and False Promises Harmed**  
6           **Twitch**

7           35.       Had Twitch known that Mr. Varga's giveaway would be conducted through a  
8 secondary-market skin gambling website owned by Mr. Varga, and had Mr. Varga not  
9 represented that he intended to reform his conduct and not cheat the system, Twitch would not  
10 have allowed him to conduct the giveaway.

11           36.       During the giveaway, Twitch received Tweets and other communications from its  
12 user community expressing concern and complaining about the giveaway.

13           37.       Twitch also experienced a large increase in subscribers to Mr. Varga's Twitch  
14 channel during the giveaway.<sup>8</sup> However, almost half of the subscribers that subscribed to  
15 Mr. Varga's channel during the giveaway cancelled their subscription and Twitch received a  
16 large number of fraud-based chargebacks from these subscribers, meaning Twitch was required  
17 to refund the revenues received from the subscription.

18           38.       The core of Twitch's business is the ability to provide its user community with a  
19 safe and trustworthy space to enjoy gaming and other creative content. By not prohibiting the  
20 giveaway, Twitch's users were exposed to untrustworthy and harmful content through the misuse  
21 of Twitch's services. This caused injury to Twitch's reputation and user goodwill by  
22 undermining Twitch's core value proposition to safeguard the integrity of its services. Such loss  
23 of reputation is evidenced not only by the high levels of user complaints and fraud chargebacks  
24 Twitch received, but also through the negative publicity and media attention it has received in  
25 the coverage of Mr. Varga's giveaway and other misconduct.

26           39.       Twitch also suffered damages as a result of payments it made to Mr. Varga for the  
27 subscribers he improperly obtained through the deceptive giveaway.

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28           <sup>8</sup> These were not necessarily new subscribers to Twitch, they may have already subscribed to other Twitch channels  
or re-subscribed to Mr. Varga's channel.

1                   **E. Twitch's Termination of Varga's Account Due to His Numerous Violations  
2 and Misrepresentations**

3         40. Throughout 2016, Twitch personnel sent Mr. Varga various notifications and had  
4 in-depth Skype conversations with Mr. Varga informing him that his CS:GO skin gambling  
5 content, along with his other objectionable content, violated his Agreement, Twitch's Terms of  
6 Service and Rules of Conduct. Mr. Varga, however, did not stop streaming his non-gaming  
7 CS:GO skin gambling content, but rather engaged in a day-long giveaway that promoted –  
8 through cheating and misinformation – nothing but nongaming, skin gambling content. The  
9 giveaway flouted Twitch's terms and rules and Mr. Varga made false promises to Twitch  
10 personnel to enable him to take advantage of and illegally profit from his partnership with  
Twitch and access to its user community.

11         41. Twitch is informed and believes that Mr. Varga's CSGOShuffle skin gambling  
12 website was the subject of a number of lawsuits, and it was eventually taken offline.

13         42. On July 19, 2016, Twitch terminated Mr. Varga's account. The termination was  
14 based on (i) the fact that Twitch had learned that the giveaway was conducted through a  
15 secondary-market skin gambling website in which Mr. Varga had an undisclosed financial  
16 interest and that he used to scam Twitch's user community, coupled with (ii) his long history of  
17 unabated violations of, and flagrant disregard for, his Agreement with Twitch and Twitch's  
18 terms and rules.

19         43. In the days leading up to his termination, representatives of Twitch discussed  
20 Mr. Varga's repeated breaches, the giveaway, and the information about Mr. Varga's  
21 involvement in CSGOShuffle in person and gave him an opportunity to explain his position.  
22 Mr. Varga did not attempt to communicate with anyone at Twitch regarding the termination of  
23 his account until December 2016, the month after a lawsuit filed against him was dismissed (for  
24 lack of jurisdiction) in the Western District of Washington, and more than four months after his  
25 account was terminated.

26         44. Twitch paid Mr. Varga pursuant to the Agreement through the time his account  
27 was terminated, and Twitch did not withhold the amounts that were subsequently charged back  
28 or withheld following the giveaway.

1       45. It was not until April 5, 2017, that Mr. Varga retained counsel and sent a demand  
2 letter to Twitch demanding that his account be reinstated because it was allegedly not terminated  
3 with proper notice. Notably, Mr. Varga did not dispute that he received actual notice of multiple  
4 breaches of the Content Guidelines in the Agreement and Twitch's Terms. Neither, in all the  
5 communications from Mr. Varga's counsel regarding the termination of Mr. Varga's account,  
6 did Varga deny or attempt to deny that he streamed improper skin gambling content or other  
7 objectionable content on his Twitch channel. Instead, he merely claimed that other Twitch  
8 partners were streaming similar content.

9       46. It then was not until February 14, 2018, that Mr. Varga filed the above action  
10 against Twitch alleging claims amounting to nothing more than breach of contract. In his  
11 complaint, Mr. Varga again does not deny that he promoted a potentially illegal skin gambling  
12 website on Twitch, that he failed to disclose his ownership interest in that website to Twitch and  
13 its users, nor that he used that website to cheat his Twitch followers for his own profit.

## **FIRST CAUSE OF ACTION**

(Breach of Contract)

16           47. Twitch re-alleges and incorporates paragraphs 1 through 46 above as if fully set  
17 forth herein.

18        48. The Agreement and Terms of Service each form a valid contract entered into by  
19 the parties for consideration.

20        49. Twitch fully performed under the Agreement and Terms of Service. Any failure  
21 to perform was excused by Mr. Varga's breach of the Agreement and/or Terms of Service.

22        50.     Mr. Varga breached the Agreement and the Terms of Service, including the Rules  
23 of Conduct, by streaming content that was prohibited by the Agreement and/or the Terms of  
24 Service, including but not limited to non-gaming content, pornographic or otherwise sexually  
25 explicit content, self-destructive behavior, hate speech, content that violated the terms of service  
26 or user agreements of third-parties, and content that promoted potentially illegal gambling  
27 activity and/or was otherwise objectionable, and by continuing to stream content that was  
28 prohibited by the Agreement and/or the Terms of Service after receiving notice of his violations.

1           51. As a consequence of Mr. Varga's breach, Twitch has been damaged in an amount  
2 to be proven at trial.

3 WHEREFORE, Twitch prays for judgment as set forth below.

## **SECOND CAUSE OF ACTION**

(Negligent Misrepresentation)

6        52.      Twitch re-alleges and incorporates paragraphs 1 through 51 above, as though fully  
7 set forth herein.

8        53.     Mr. Varga misrepresented and misleadingly omitted material information about  
9 his use of and ownership interest in the secondary-market skin gambling website he promoted on  
10 his Twitch channel during the giveaway. Mr. Varga also failed to disclose the fact that through  
11 his ownership interest in CSGOShuffle, Mr. Varga was rigging jackpots and otherwise  
12 manipulating gambling results and using his ill-gotten skins to further promote CSGOShuffle on  
13 Twitch.

14       54. Mr. Varga affirmatively represented to Twitch the inadvertence of his prior non-  
15 compliance based on an alleged misunderstanding of the rules, his intention to reform his  
16 conduct, and his intention *not* to “cheat the system.” He then immediately streamed content that  
17 unquestionably violated the rules and “cheated the system” in order to perpetrate a massive fraud  
18 on Twitch and Twitch’s user community through his misuse of Twitch’s system.

19       55. Mr. Varga also voluntarily communicated to Twitch his intention to conduct the  
20 giveaway but failed to disclose important information in his exclusive possession about the  
21 nature of the giveaway and his ownership interest in the third-party website through which the  
22 giveaway would be conducted. A half-truth of this nature constitutes an actionable  
23 misrepresentation under a negligence theory. *See OCM Principal Opportunities Fund, L.P. v.*  
24 *CIBC World Markets Corp.*, 157 Cal. App. 4th 835, 854, 68 Cal. Rptr. 3d 828, 847 (2007), as  
25 modified (Dec. 26, 2007) (“when the defendant purports to convey the ‘whole truth’ about a  
26 subject, ‘misleading half-truths’ about the subject may constitute positive assertions for the  
27 purpose of negligent misrepresentation”).

28 56. Mr. Varga had no reasonable grounds for believing his representations and half-

1 truths about his conduct and the giveaway were true. The giveaway was specifically designed to  
2 misuse Twitch's system and take advantage of its user community.

3 57. Mr. Varga intended Twitch to rely on his representations and assurances about his  
4 conduct and the giveaway, including his half-truths about the nature of the giveaway, so he  
5 would be able to run the giveaway as planned.

6 58. By not prohibiting the giveaway, Twitch reasonably relied on Mr. Varga's  
7 misrepresentations and half-truths regarding his conduct and the nature and purpose of the  
8 giveaway.

9 59. Twitch had no knowledge of Mr. Varga's intention to conduct the giveaway on a  
10 secondary-market skin gambling website, his ownership interest in that website, his ability to and  
11 practice of rigging jackpots and otherwise manipulating gambling activity on CSGOShuffle, or  
12 his use of ill-gotten skins to promote CSGOShuffle.

13 60. Twitch's reliance on Mr. Varga's representations and half-truths was a substantial  
14 factor in causing damage to Twitch.

15 61. As a proximate result of Mr. Varga's misrepresentations and half-truths, Twitch  
16 has suffered damages in an amount to be proved at trial. For example, Mr. Varga's conduct  
17 caused Twitch reputational harm and loss of goodwill with its user community.

18 WHEREFORE, Twitch prays for judgment as set forth below.

19 **THIRD CAUSE OF ACTION**

20 (Fraud)

21 62. Twitch re-alleges and incorporates paragraphs 1 through 61 above, as though fully  
22 set forth herein.

23 63. Mr. Varga misrepresented and misleadingly omitted material information about  
24 his use of and ownership interest in the secondary-market skin gambling website he promoted on  
25 his Twitch channel during the giveaway, CSGOShuffle. Mr. Varga also failed to disclose the  
26 fact that through his ownership interest in CSGOShuffle, Mr. Varga was rigging jackpots and  
27 otherwise manipulating gambling outcomes on CSGOShuffle and using his ill-gotten skins to  
28 further promote CSGOShuffle on Twitch.

1       64. Mr. Varga voluntarily represented to Twitch that he had been planning to run a  
2 giveaway on his channel on June 25th. In doing so, Mr. Varga omitted the material facts that the  
3 giveaway would be conducted on a secondary-market skin gambling website in which he had an  
4 ownership interest. He also did not disclose his intention to misuse Twitch's system and take  
5 advantage of its user community by referring Twitch users to his skin gambling website, where  
6 he would ultimately scam users for his own financial gain.

7       65. Mr. Varga knew, or was reckless in not knowing, his representations to Twitch  
8 about his conduct and the giveaway were false and misleading. Mr. Varga had no intention of  
9 trying to comply with Twitch's rules and guidelines, and intended to cheat Twitch's system for  
10 his own financial gain. Further, Mr. Varga intentionally omitted material facts about the  
11 giveaway, including information about his ownership interest and manipulative practices, in  
12 order to mislead Twitch.

13       66. Mr. Varga intended Twitch to rely on his representations about the giveaway and  
14 his characterizations of his noncompliance and intentions to reform his conduct so that he would  
15 be able to run the giveaway as planned.

16       67. By not prohibiting the giveaway, Twitch reasonably relied on Mr. Varga's  
17 misrepresentations and omissions regarding his conduct and the nature and purpose of the  
18 giveaway.

19       68. Twitch had no knowledge of Mr. Varga's intention to conduct the giveaway on a  
20 secondary-market skin gambling website, his ownership interest in that website, his ability to and  
21 practice of rigging jackpots and otherwise manipulating gambling activity on CSGOShuffle, or  
22 his use of ill-gotten skins to promote CSGOShuffle.

23       69. Twitch's reliance on Mr. Varga's representations and omissions was a substantial  
24 factor in causing damage to Twitch.

25       70. As a proximate result of Mr. Varga's misrepresentations and omissions of  
26 material facts, Twitch has suffered damages in an amount to be proved at trial. For example, Mr.  
27 Varga's conduct caused Twitch reputational harm and loss of goodwill with its user community.

28                   WHEREFORE, Twitch prays for judgment as set forth below.

1 material facts, Twitch has suffered damages in an amount to be proved at trial. For example, Mr.  
2 Varga's conduct caused Twitch reputational harm and loss of goodwill with its user community.

3 WHEREFORE, Twitch prays for judgment as set forth below.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Twitch prays that judgment be entered in its favor and against  
6 Mr. Varga, as follows:

7 1. A finding that Mr. Varga is in breach of the Agreement and Terms of Service and  
8 is liable for negligent misrepresentation and/or fraud;

9 2. A finding that Twitch has no further obligations to Mr. Varga under the  
10 Agreement;

11 3. An award of compensatory damages, plus prejudgment interest thereon, along  
12 with any further compensatory damages to be proven;

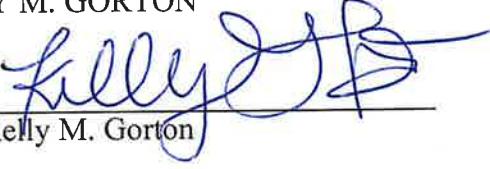
13 4. An award of costs of suit or expenses incurred herein, including, but not limited  
14 to, expenses, and costs, as provided or permitted by applicable law; and

15 5. For such other and further relief as the Court may deem just and proper.

16  
17 Dated: January 7, 2019

Respectfully Submitted,

18  
19 DAVIS WRIGHT TREMAINE LLP  
JAMES ROSENFIELD  
MARTIN L. FINEMAN  
KELLY M. GORTON

20 By:   
21 Kelly M. Gorton

22  
23 Attorneys for Defendant and Cross-Complainant  
24 TWITCH INTERACTIVE, INC.,  
25 ERRONEOUSLY NAMED AS TWITCH  
26 INTERACTIVE, INC. A/K/A TWITCH.TV,  
27 INC.

**PROOF OF SERVICE**

*James Varga v. Twitch Interactive, Inc., et al.*  
San Francisco County Superior Court Case No. CGC-18-564337

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Davis Wright Tremaine LLP, 505 Montgomery Street, Suite 800, San Francisco, CA 94111. On the below-mentioned date, I served the within

## **SECOND AMENDED CROSS-COMPLAINT**

- FILE& SERVEXPRESS — by electronically serving the document(s) described above via File & ServeXpress, on the recipients designated on the Transaction Receipt located on the File & ServeXPress website (<https://secure.fileandservexpress.com>) pursuant to the Court Order establishing the case website and authorizing service of documents.

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*Counsel for the Plaintiff*

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 7, 2019 at San Francisco, California.

Kimberly Greene

# **Exhibit 1**



## All about Twitch

- [About](#)
- [Advertise](#)
- [Partners](#)
- [Mobile](#)
- [Jobs](#)
- [Help](#)
- [Legal](#)
  
- [Terms of Service](#)
- [Privacy Notice](#)
- [DMCA Guidelines](#)
- [Terms of Sale](#)

## Terms of Service

Last modified on **9/9/12**

### 1. Introduction; Your Agreement to these Terms of Service.

Welcome to the game video management and streaming platform operated by Justin.tv, Inc. dba Twitch (“**Twitch**”) consisting of the web site available at the URL <http://www.twitch.tv> and all related services, software applications and networks that allow for the authorized streaming and distribution of video content over the internet (the “**Twitch Service**”). The Twitch Service also includes any other sites or services that link to these Terms of Service. Other services offered by Twitch may be subject to separate terms.

The following Terms of Service for the Twitch Service is a legal contract between you, an individual user of at least 13 years of age or a single entity (“**You**” or, collectively, “**Users**”), and Twitch regarding your use of the Twitch Service.

Twitch may offer certain additional services by which you agree to pay fees to Twitch, a list of such services and terms which may be made available on the Twitch web page. If you register

and/or use any such paid fee services, you are also bound by the Twitch Terms of Sale. The Twitch Terms of Sale is hereby incorporated by reference.

PLEASE READ CAREFULLY THE FOLLOWING TERMS OF SERVICE. BY REGISTERING FOR, ACCESSING, BROWSING, DOWNLOADING FROM OR USING THE TWITCH SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING ANY ADDITIONAL GUIDELINES AND FUTURE MODIFICATIONS (COLLECTIVELY, THE "TERMS"). IF AT ANY TIME YOU DO NOT AGREE TO THESE TERMS, PLEASE IMMEDIATELY TERMINATE YOUR USE OF THE TWITCH SERVICE.

IF YOU ARE USING OR OPENING AN ACCOUNT WITH TWITCH ON BEHALF OF A COMPANY, ENTITY, OR ORGANIZATION (COLLECTIVELY, A "SUBSCRIBING ORGANIZATION") THEN YOU REPRESENT AND WARRANT THAT YOU: (I) ARE AN AUTHORIZED REPRESENTATIVE OF THAT SUBSCRIBING ORGANIZATION WITH THE AUTHORITY TO BIND SUCH ORGANIZATION TO THESE TERMS; (II) HAVE READ THE FOREGOING TERMS; (III) UNDERSTAND THESE TERMS, AND (IV) AGREE TO THESE TERMS ON BEHALF OF SUCH SUBSCRIBING ORGANIZATION.

## 2. Eligibility.

The Twitch Service is not available to persons under the age of 13 or to any users previously suspended or removed from the Twitch Service by Twitch. BY DOWNLOADING, INSTALLING OR OTHERWISE USING THE TWITCH SERVICE, YOU REPRESENT THAT YOU ARE AT LEAST 13 YEARS OF AGE AND HAVE NOT BEEN PREVIOUSLY SUSPENDED OR REMOVED FROM THE TWITCH SERVICE.

## 3. Incorporation by Reference.

Your privacy is important to Twitch. The Twitch Privacy Notice is hereby incorporated into these Terms by reference. Please read this notice carefully for information relating to Twitch's collection, use, and disclosure of your personal information on or from the Twitch Service.

## 4. Individual Features and Services.

When using the Twitch Service, you will be subject to any additional posted guidelines or rules applicable to specific services and features which may be posted from time to time (the "Guidelines"). All such Guidelines are hereby incorporated by reference into these Terms.

## 5. Modification of these Terms.

Twitch reserves the right, at our discretion, to change, modify, add, or remove portions of these Terms at any time. Please check these Terms and any Guidelines periodically for changes. Your continued use of the Twitch Service after the posting of changes constitutes your binding acceptance of such changes. For any material changes to these Terms, such amended terms will automatically be effective thirty days after they are initially posted on the Twitch Service. We will always make a reasonable effort to notify you if we do change these Terms.

## 6. Digital Millennium Copyright Act.

Please note that since we respect game designer and publisher and other content owner rights, it is Twitch's policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act (the "DMCA"). For more information, please go to Twitch's [DMCA Notification Guidelines](#). Please note that Twitch will promptly terminate without notice any User's access to the Twitch Service if that User is determined by Twitch to be a "repeat infringer." A repeat infringer is a User who has been notified by Twitch of infringing activity violations more than twice and/or who has had their Broadcaster Content or any other user-submitted content removed from the Twitch Service more than twice. In addition, Twitch accommodates and does not interfere with standard technical measures used by copyright owners to protect their materials.

## 7. Twitch Service License Grant.

### 1. License Grant to Upload or Stream.

Twitch allows certain users ("Broadcaster") to distribute streaming live and pre-recorded videos of video game related activities.

If you sign up for an account as a Broadcaster, subject to your compliance with the terms and conditions set out in this Terms of Service, Twitch hereby grants to you a personal, limited, non-exclusive, non-transferable, freely revocable license to use the Twitch Service for the uploading and distributing of authorized digital content, including videos ("Broadcaster Content").

### 2. Content is Uploaded at Your Own Risk.

Notwithstanding any obligations hereunder of Twitch to protect Broadcaster Content, Twitch cannot guarantee that there will be no unauthorized copying or distribution of Broadcaster Content nor will Twitch be liable for any copying or usage of the Broadcaster Content not authorized by Twitch.

### 3. License Grant to View by Streaming.

If you sign up for an Account, subject to your compliance with this Terms of Service, Twitch hereby grants to you a personal, limited, non-exclusive, non-transferable, freely revocable license to view by streaming Broadcaster Content solely through the Twitch Service subject to the license under which such Broadcaster Content is distributed.

### 4. Reservation of Rights.

Twitch reserves all rights not expressly granted in this Terms of Service.

### 5. Prevention of Unauthorized Use.

Unless expressly permitted in writing by Twitch, you may not sell, rent, lease, share or provide access to your Broadcaster account to any third party, including without limitation charging any remuneration to any third party for access to administrative rights on your Broadcaster account. Twitch reserves the right to exercise whatever lawful means it deems necessary to prevent unauthorized use of the Twitch Service, including, but not limited to, technological barriers, IP mapping, and directly contacting your Internet Service Provider (ISP) regarding such unauthorized use.

## **8. Broadcaster Content License Grant; Representations and Warranties.**

### **1. License Grant to Twitch.**

Unless otherwise agreed to in a written agreement between you and Twitch that was signed by an authorized representative of Twitch:

- a) By distributing or disseminating Broadcaster Content through the Twitch Service, you hereby grant to Twitch a worldwide, non-exclusive, transferable, assignable, fully paid-up, royalty-free, license to host, transfer, display, perform, reproduce, distribute, compress or convert for streaming, and otherwise exploit your Broadcaster Content, in any media formats and through any media channels, in order to publish and promote such Broadcaster Content in connection with services offered or to be offered by Twitch. Such license will apply to any form, media, or technology now known or hereafter developed.
- b) Subject to section 8.2, below, the foregoing license granted by you terminates as to a specific piece of Broadcaster Content once you remove or delete such Broadcaster Content from the Twitch Service.

### **2. License Grant to other Twitch users.**

By distributing or disseminating Broadcaster Content through the Twitch Service, you hereby grant to each User of the Twitch Service that is authorized to access your Broadcaster Content a perpetual, personal, non-commercial, non-transferable, non-exclusive license to access and view your Broadcaster Content.

### **3. Broadcaster Content Representations and Warranties.**

You are solely responsible for your Broadcaster Content and the consequences of posting or publishing them. By uploading and publishing your Broadcaster Content, you affirm, represent, and warrant that: (1) you are the creator and owner of or have the necessary licenses, rights, consents, releases and permissions to use and to authorize Twitch and Twitch's Users to use your Broadcaster Content as necessary to exercise the licenses granted by you in this section and in the manner contemplated by Twitch and this Terms of Service; (2) your Broadcaster Content does not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right (b) slander, defame, or libel any other person; (3) your Broadcaster Content does not contain any viruses, adware, spyware, worms, or other malicious code or (4) unless you have received prior written authorization, your Broadcaster Content

specifically does not contain any prerelease or nonpublic beta software or game content or any confidential information of Twitch or third parties. Violators of these third-party rights may be subject to criminal and civil liability. Twitch reserves all rights and remedies against any Users who violate this Terms of Service.

#### 4. Broadcaster Content Disclaimer.

You understand that when using the Twitch Service you will be exposed to Broadcaster Content from a variety of sources, and that Twitch is not responsible for the accuracy, usefulness, or intellectual property rights of or relating to such Broadcaster Content. You further understand and acknowledge that you may be exposed to Broadcaster Content that is inaccurate, offensive, indecent or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Twitch with respect thereto. Twitch does not endorse any Broadcaster Content or any opinion, recommendation or advice expressed therein, and Twitch expressly disclaims any and all liability in connection with Broadcaster Content. If notified by a User or a content owner of Broadcaster Content that allegedly does not conform to this Terms of Service, Twitch may investigate the allegation and determine in its sole discretion whether to remove the Broadcaster Content, which it reserves the right to do at any time and without notice. For clarity, Twitch does not permit copyright infringing activities on the Twitch Service.

#### 9. Prohibited Conduct.

BY USING THE TWITCH SERVICE YOU AGREE NOT TO:

1. use the Twitch Service for any purposes other than to disseminate or receive original or appropriately licensed content and/or to access the Twitch Service as such services are offered by Twitch;
2. rent, lease, loan, sell, resell, sublicense, distribute or otherwise transfer the licenses granted herein or any Materials (as defined in section 13, below);
3. post, upload, or distribute any defamatory, libelous, or inaccurate Broadcaster Content or other content;
4. post, upload, or distribute any Broadcaster Content or other content that is unlawful or that a reasonable person could deem to be objectionable, offensive, indecent, pornographic, invasive of another's privacy, harassing, threatening, embarrassing, distressing, vulgar, hateful, racially or ethnically offensive, or otherwise inappropriate;
5. impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the Twitch Service accounts of others without permission, forge another persons' digital signature, misrepresent the source, identity, or content of information transmitted via the Twitch Service, or perform any other similar fraudulent activity;
6. delete the copyright or other proprietary rights on the Twitch Service or Broadcaster Content;

7. make unsolicited offers, advertisements, proposals, or send junk mail or spam to other Users of the Twitch Service. This includes, but is not limited to, unsolicited advertising, promotional materials, or other solicitation material, bulk mailing of commercial advertising, chain mail, informational announcements, charity requests, petitions for signatures, promotional giveaways (such as raffles and contests), and other similar activities;
8. use the Twitch Service for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property and other proprietary rights, and data protection and privacy;
9. defame, harass, abuse, threaten or defraud Users of the Twitch Service, or collect, or attempt to collect, personal information about Users or third parties without their consent;
10. use the Twitch Service if you are under the age of thirteen (13) years old;
11. remove, circumvent, disable, damage or otherwise interfere with security-related features of the Twitch Service or Broadcaster Content, features that prevent or restrict use or copying of any content accessible through the Twitch Service, or features that enforce limitations on the use of the Twitch Service or Broadcaster Content;
12. reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Twitch Service or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
13. modify, adapt, translate or create derivative works based upon the Twitch Service or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
14. intentionally interfere with or damage operation of the Twitch Service or any user's enjoyment of them, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code;
15. relay email from a third party's mail servers without the permission of that third party;
16. use any robot, spider, scraper, or other automated means to access the Twitch Service for any purpose or bypass any measures Twitch may use to prevent or restrict access to the Twitch Service;
17. manipulate identifiers in order to disguise the origin of any Broadcaster Content transmitted through the Service; or
18. interfere with or disrupt the Twitch Service or servers or networks connected to the Twitch Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Twitch Service.

## 10. Account

### 1. Account and Password.

When you use the Twitch Service to upload and/or download or purchase content or any products, services, or information from Twitch, you may be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. You agree that the information you provide to Twitch on registration and at all other times will be true, accurate, current, and complete. You also agree that you will ensure that this information is kept accurate and up-to-date at all times. If you have reason to believe that your account is no longer secure (e.g., in the event of a loss, theft or unauthorized disclosure or use of your account ID, password, or any credit, debit or charge card number, if applicable), then you agree to immediately notify Twitch. You may be liable for the losses incurred by Twitch or others due to any unauthorized use of your Twitch Service account.

## 2. Third Party Accounts.

Twitch may permit you to register for and log onto the Twitch Service via certain third party social networks, such as by using Facebook Connect. If you log in via such social networks, the profile information connected to the account you use to log into the Twitch Service, including your name, may be used by Twitch in order to provide and support your account. You also acknowledge and agree that Twitch may publish information regarding your use of the Twitch Service to and in connection with any such third party social network with which you use the Twitch Service

## 3. Third-Party Sites, Products and Services; Links.

The Twitch Service may include links or references to other web sites or services solely as a convenience to Users ("Reference Sites"). Twitch does not endorse any such Reference Sites or the information, materials, products, or services contained on or accessible through Reference Sites. In addition, your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Twitch Service are solely between you and such advertiser. Access and use of Reference Sites, including the information, materials, products, and services on or available through Reference Sites is solely at your own risk.

## 11. Termination; Terms of Service Violations.

### 1. Twitch.

You agree that Twitch, in its sole discretion, for any or no reason, and without penalty, may terminate any account (or any part thereof) you may have with Twitch or your use of the Twitch Service and remove and discard all or any part of your account, User profile, and any Broadcaster Content, at any time. Twitch may also in its sole discretion and at any time discontinue providing access to the Twitch Service, or any part thereof, with or without notice. You agree that any termination of your access to the Twitch Service or any account you may have or portion thereof may be effected without prior notice, and you agree that Twitch will not be liable to you or any third party for any such termination. Any suspected fraudulent, abusive or illegal activity may be referred to

appropriate law enforcement authorities. These remedies are in addition to any other remedies Twitch may have at law or in equity. As discussed herein, Twitch does not permit copyright infringing activities on the Twitch Service, and will terminate access to the Twitch Service, and remove all Broadcaster Content or other content submitted by any Users who are found to be repeat infringers.

## 2. You.

Your only remedy with respect to any dissatisfaction with (i) the Twitch Service, (ii) any term of this Terms of Service, (iii) any policy or practice of Twitch in operating the Twitch Service, or (iv) any content or information transmitted through the Twitch Service, is to terminate this Terms of Service and your account. You may terminate this Terms of Service at any time by discontinuing use of any and all parts of the Twitch Service.

## 3. Broadcaster Content.

Subject to section 8.2 above, if you notify Twitch by submitting email to [help@twitch.tv](mailto:help@twitch.tv), Twitch will discontinue prospective hosting and distribution of your Broadcaster Content.

## 12. Ownership; Proprietary Rights.

The Twitch Service is owned and operated by Twitch. The visual interfaces, graphics, design, compilation, information, computer code (including source code or object code), products, services, and all other elements of the Twitch Service provided by Twitch (the "Materials") are protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. Except for any Broadcaster Content that are provided and owned by Users, all Materials contained on the Twitch Service are the property of Twitch or its subsidiaries or affiliated companies and/or third-party licensors. All trademarks, service marks, and trade names are proprietary to Twitch or its affiliates and/or third-party licensors. Except as expressly authorized by Twitch, you agree not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the Materials. Twitch reserves all rights not expressly granted in this Terms of Service.

## 13. Indemnification.

You agree to indemnify, save, and hold Twitch, its affiliated companies, contractors, employees, agents and its third-party suppliers, licensors, and partners harmless from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your use or misuse of the Twitch Service, any violation by you of these Terms, or any breach of the representations, warranties, and covenants made by you herein. Twitch reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Twitch, and you agree to cooperate with Twitch's defense of these claims. Twitch will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

#### **14. Disclaimers; No Warranties.**

##### **1. No warranties.**

TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, TWITCH, AND ITS AFFILIATES, PARTNERS, AND SUPPLIERS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM TWITCH OR THROUGH THE TWITCH SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. YOU EXPRESSLY ACKNOWLEDGE THAT AS USED IN THIS SECTION 15, THE TERM TWITCH INCLUDES TWITCH'S OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, LICENSORS AND SUBCONTRACTORS.

##### **2. "As is" and "As available" and "With All Faults".**

YOU EXPRESSLY AGREE THAT THE USE OF THE TWITCH SERVICE IS AT YOUR SOLE RISK. THE TWITCH SERVICE AND ANY DATA, INFORMATION, THIRD-PARTY SOFTWARE, CONTENT (INCLUDING BROADCASTER CONTENT), REFERENCE SITES, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE TWITCH SERVICE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE", "WITH ALL FAULTS" BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND EITHER EXPRESS OR IMPLIED.

##### **3. Service Operation and Broadcaster Content.**

TWITCH, ITS SUPPLIERS, LICENSORS, AFFILIATES, AND PARTNERS DO NOT WARRANT THAT THE DATA, CONTENT, FUNCTIONS, OR ANY OTHER INFORMATION OFFERED ON OR THROUGH THE TWITCH SERVICE OR ANY REFERENCE SITES WILL BE UNINTERRUPTED, OR FREE OF ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.

##### **4. Accuracy.**

TWITCH, ITS SUPPLIERS, LICENSORS, AFFILIATES, AND PARTNERS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE TWITCH SERVICE OR ANY REFERENCE SITES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

##### **5. Harm to Your Computer.**

YOU UNDERSTAND AND AGREE THAT YOU USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN INFORMATION, MATERIALS, OR DATA THROUGH THE TWITCH SERVICE OR ANY REFERENCE SITES AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM) OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

**6. Uploaded Content.**

THE SECURITY MEASURES TO PROTECT BROADCASTER CONTENT USED BY TWITCH HEREIN ARE USED IN CONJUNCTION WITH THE BROADCASTER CONTENT "AS-IS" AND WITH NO ASSURANCES THAT SUCH SECURITY MEASURES WILL WITHSTAND ATTEMPTS TO EVADE SECURITY MECHANISMS OR THAT THERE WILL BE NO CRACKS, DISABLEMENTS OR OTHER CIRCUMVENTION OF SUCH SECURITY MEASURES.

**15. Limitation of Liability and Damages.**

**1. Limitation of Liability.**

UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL TWITCH OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM ANY UNSUCCESSFUL COURT ACTION OR LEGAL DISPUTE, LOST BUSINESS, LOST REVENUES OR LOSS OF ANTICIPATED PROFITS OR ANY OTHER PECUNIARY OR NON-PECUNIARY LOSS OR DAMAGE OF ANY NATURE WHATSOEVER) ARISING OUT OF OR RELATING TO THESE TERMS OR THAT RESULT FROM YOUR USE OR YOUR INABILITY TO USE THE MATERIALS (INCLUDING BROADCASTER CONTENT) ON THE TWITCH SERVICE OR ANY REFERENCE SITES, OR ANY OTHER INTERACTIONS WITH TWITCH, EVEN IF TWITCH OR AN TWITCH AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**2. Limitation of Damages.**

IN NO EVENT WILL TWITCH OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE TWITCH SERVICE OR YOUR INTERACTION WITH OTHER TWITCH SERVICE USERS (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE), EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THE TWITCH SERVICE DURING THE

TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM OR ONE HUNDRED DOLLARS, WHICHEVER IS GREATER.

**3. Reference Sites.**

THESE LIMITATIONS OF LIABILITY ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY YOU BY REASON OF ANY PRODUCTS OR SERVICES SOLD OR PROVIDED ON ANY REFERENCE SITES OR OTHERWISE BY THIRD PARTIES OTHER THAN TWITCH AND RECEIVED THROUGH OR ADVERTISED ON THE TWITCH SERVICE OR RECEIVED THROUGH ANY REFERENCE SITES.

**4. Basis of the Bargain.**

YOU ACKNOWLEDGE AND AGREE THAT TWITCH HAS OFFERED ITS PRODUCTS AND SERVICES, SET ITS PRICES, AND ENTERED INTO THESE TERMS IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND TWITCH, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND TWITCH. TWITCH WOULD NOT BE ABLE TO PROVIDE THE TWITCH SERVICE TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

**5. Limitations by Applicable Law.**

CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF YOU RESIDE IS SUCH A JURISDICTION, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. THE LIMITATIONS OR EXCLUSIONS OF WARRANTIES, REMEDIES OR LIABILITY CONTAINED IN THIS TERMS OF SERVICE APPLY TO YOU TO THE FULLEST EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION WHERE YOU ARE LOCATED.

**16. United States Export Controls.**

You agree to comply with all export laws and restrictions and regulations of the United States Department of Commerce or other United States or other sovereign agency or authority, and not to export, or allow the export or re-export of any software, technical data or any direct product thereof in violation of any such restrictions, laws or regulations, or unless and until all required licenses and authorizations are obtained with respect to the countries specified in the applicable United States Export Administration Regulations (or any successor supplement or regulations). The transfer of certain technical data and commodities may require a license from an agency of the United States government and/or written assurances by you that you will not export such

software, technical data or commodities to certain foreign countries without prior approval of such agency. Your rights under this Terms of Service are contingent on your compliance with this provision.

## **17. Miscellaneous.**

### **1. Notice.**

Twitch may provide you with notices, including those regarding changes to Twitch's terms and conditions, by email, regular mail or postings on the Twitch Service. Notice will be deemed given twenty-four hours after email is sent, unless Twitch is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to a postal address, if provided by you through the Twitch Service. In such case, notice will be deemed given three days after the date of mailing. Notice posted on the Twitch Service is deemed given 30 days following the initial posting.

### **2. Waiver.**

The failure of Twitch to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by Twitch.

### **3. Governing Law.**

These Terms will be governed by and construed in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law.

### **4. Jurisdiction.**

You agree that any action at law or in equity arising out of or relating to these Terms or Twitch will be filed only in the state or federal courts in and for Santa Clara County, California, and you hereby consent and submit to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action.

### **5. Severability.**

If any provision of these Terms or any Guidelines is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from these Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

### **6. Assignment.**

These Terms and related Guidelines, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Twitch without restriction. Any assignment attempted to be made in violation of this Terms of Service shall be void.

**7. Survival.**

Upon termination of these Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration, including, but not limited to, sections 6, 7.4, 7.5, and 8-18.

**8. Headings.**

The heading references herein are for convenience purposes only, do not constitute a part of these Terms, and will not be deemed to limit or affect any of the provisions hereof.

**9. Entire Agreement.**

This is the entire agreement between you and Twitch relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change to these Terms or Guidelines made by Twitch as set forth in section 5 above.

**10. Claims.**

YOU AND TWITCH AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE TWITCH SERVICE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**11. Disclosures.**

The services are offered by Justin.tv, Inc. dba Twitch, located at: 23 Geary Street, Suite 800, San Francisco, CA 94108 and email: help@twitch.tv. If you are a California resident, you may have this same information emailed to you by sending a letter to the foregoing address with your email address and a request for this information.

Twitch

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## **Exhibit 2**

**CONTENT LICENSE  
AND  
BASE NETWORK  
AGREEMENT**

**Twitch.tv  
23 Geary  
Street, Suite  
800  
San  
Francisco, CA  
94108  
contentpartne  
rs@twitch.tv  
Tel: (415) 808-  
0802**



## **COVER SHEET**

This Twitch.tv Content License and Network Agreement ("Agreement") is by and between the following Parties:

**Twitch.tv, Inc.**, a Delaware corporation doing business as Twitch.tv ("Twitch.tv"),

and

James Varga

( "Content Provider").

**Effective Date:** November 12, 2012

**Term/Termination:** The term of this Agreement ("Term") shall commence on the Effective Date and shall continue for an initial term of two (2) years, unless earlier terminated in accordance with Section 5. Thereafter, the Term shall automatically renew for successive one (1) year renewal terms, unless, at least ninety (90) days prior to the beginning of any renewal term, either Party gives the other Party written notice of its intent not to renew this Agreement.

**Licensed Content:** Described in Exhibit A, version November 12, 2012

**Fee Schedule:** Described in Exhibit B, version November 12, 2012

**Agreement:** 15 total pages including this Cover Sheet, the Base Network Agreement, and 6 Exhibits (A, B, C, D, E, and F).

The Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**TWITCH.TV, INC.**

By: Kevin Lin  
Name: Kevin Lin  
Title: Chief Operating Officer  
Date: \_\_\_\_\_

**CONTENT PROVIDER**

By: James Varga  
Name: James Varga  
Title: \_\_\_\_\_  
Date: 11/16/2012

**Address, Email and Fax for Notices:**

Address: 23 Geary Street, Suite 800  
San Francisco, CA 94108  
Email: contentpartners@Twitch.tv  
Fax: (415) 808-0801

**Address, Email and Fax for Notices:**

Address: 2110 Camino San Rafael  
Glendale CA, 91206  
Email: James.Varga@gmail.com  
Fax: N/A

Content Provider is the owner of and/or has rights to video segments, videos, images, written content and other content, both existing as of the Effective Date and to-be-created by Content Provider throughout the term of this Agreement, including the content that is described in Exhibit A ("Licensed Content").

Content Provider wishes to grant to Twitch.tv a license to broadcast, stream, distribute, exhibit and otherwise make available the Licensed Content.

Content Provider wishes for Twitch.tv to monetize the broadcasting, streaming, distribution and exhibition of the Licensed Content, both through advertisement-supported methods.

Twitch.tv wishes to grant to Content Provider a license to embed Twitch.tv's proprietary media player software ("Player") to stream the Licensed Content from Content Provider's websites.

In consideration of the above premises, the representations, warranties and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as presented in this Agreement.

## **SECTION 1: Licenses**

### **1.1. Licenses.**

**1.1.1. License to Content Provider.** Subject to the terms and conditions of this Agreement and as further described on Exhibit C, Twitch.tv hereby grants to Content Provider, during the Term, a worldwide, non-exclusive, nontransferable (except as permitted pursuant to Section 9.2), non-sublicenseable right and license to: (a) incorporate or embed the Player within solely the Content Provider Websites, in object code format only, for the purpose of displaying, broadcasting and streaming Licensed Content from the Content Provider Websites to any electronic device platform, including but not limited to personal computers, tablets, smartphones, personal digital assistants, telephones and other mobile and portable devices; and (b) permit end users of the Content Provider Websites to access and use the Player, in object code format only, for the purpose of viewing the Licensed Content made available from the Content Provider Websites. As of the Effective Date, the Content Provider Websites (if any) are limited to those websites and internet properties expressly set forth on Exhibit A.

**1.1.2. License to Twitch.tv.** Subject to the terms and conditions of this Agreement and as further described in Exhibit C, Content Provider hereby grants to Twitch.tv, during the Term, a worldwide, nontransferable (except as permitted pursuant to Section 9.2), sublicenseable (through multiple tiers) right and license to: (a) host, cache, reproduce, transmit, broadcast, stream, distribute, perform and display (publicly and otherwise), and make available for streaming or download, the Licensed Content from the Twitch.tv Websites and Partner Websites; and (b) transcode or otherwise modify the Licensed Content for the purpose of exercising its rights under subparagraph (a) above. With respect to the Initial Broadcast of any Licensed Content, the foregoing license shall be exclusive (even as to Content Provider) to Twitch.tv, as described in Section 1.2.

**1.1.3. Restrictions.** Content Provider and Twitch.tv each agrees not to use the (i) Twitch.tv Player and (ii) the Licensed Content, respectively, in any manner or for any purpose other than expressly permitted in Section 1.1.1 or Section 1.1.2, respectively. Each Party shall not, and shall not permit any third party to: (a) copy, perform or display (publicly or otherwise), distribute, modify, adapt, port, translate, or create any derivative works based on the Twitch.tv Player or the Licensed Content, respectively, except as expressly permitted in Section 1.1.1 or Section 1.1.2, respectively; (b) assign, sell, rent, lease, sublicense, pledge, or otherwise transfer such Party's rights to use the Twitch.tv Player or the Licensed Content, respectively, in whole or in part, to any third party, except as expressly permitted in Section 1.1.1 or Section 1.1.2, respectively; or (c) remove or alter any copyright, trademark, or other proprietary notices, legends, symbols, or labels appearing on or in the Twitch.tv Player or the Licensed Content. Additionally, Content Provider shall not, and shall not permit any third party to, decompile, disassemble or otherwise reverse engineer (except to the extent expressly permitted by applicable law, notwithstanding a contractual obligation to the contrary, and only if Content Provider first notifies Twitch.tv in writing of its intended activities relating thereto), or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in, any portion of the Twitch.tv Player.

**1.1.4. Trademark License.** Subject to the terms and conditions of this Agreement: (a) Twitch.tv hereby grants to Content Provider a worldwide, non-exclusive right and license to use, reproduce and display any and all trademarks, trade names, logos and designs of Twitch.tv relating to the Twitch.tv Player ("Twitch.tv Marks"), in connection with the Content Provider's licensed use of the Twitch.tv Player, and subject to any written trademark guidelines provided by Twitch.tv to Content Provider (which may be amended by Twitch.tv from time to time by thirty (30) days written notice to Content Provider); and (b) Content Provider hereby grants to Twitch.tv a worldwide, non-exclusive right and license to use, reproduce and display any and all trademarks, trade names, logos and designs of Content Provider relating to the Licensed Content ("Content Provider Marks"), in connection with the Twitch.tv's licensed use of the Licensed Content, and subject to any written trademark guidelines provided by Content Provider to Twitch.tv (which may be amended by Content Provider from time to time by thirty (30) days written notice to Twitch.tv). Twitch.tv and Content Provider each shall have the right to monitor and approve the use of the Twitch.tv Marks and Content Provider Marks, respectively, by the other Party. All use of the Twitch.tv Marks will inure to Twitch.tv, and all use of the Content Provider Marks shall inure to Content Provider.

**1.2. Exclusivity.** The license granted to Twitch.tv in Section 1.1.2 above shall be exclusive as further described in Exhibit C.

## **SECTION 2: Advertisements.**

**2.1. Advertisements.** Twitch.tv shall have the exclusive right to sell Advertisements appearing within the Twitch.tv Player displayed in connection with the Licensed Content on the Twitch.tv Websites, Partner Websites, Content Provider Websites and Third Party Websites. Content Provider shall not have the right to directly sell any Advertisements in connection with the Licensed Content under this Agreement and will refer to Twitch.tv any third parties who wish to display advertising in connection with the Licensed Content. Twitch.tv shall make commercially reasonable efforts to cause advertisers to not provide any Advertisements that contain content or are of a subject matter that is prohibited by the guidelines attached hereto as Exhibit E. Twitch.tv shall have the exclusive (even as to Content Provider) right to: (a) obtain Advertisements from ad networks, advertising agencies, directly from advertisers or from other sources; (b) serve and display such Advertisements against all broadcast, streaming, distribution and other exhibition of all Licensed Content under this Agreement via the Twitch.tv Player, whether from the Content Provider Websites, Third Party Websites, Twitch.tv Websites or Partner Websites; (c) collect any and all payments from advertisers for such Advertisements; (d) monetize the Licensed Content within the Content Provider Websites, Third Party Websites, Twitch.tv Websites or Partner Websites. In the event that Content Provider receives any payment for such Advertisements, Content Provider shall notify the parties who paid such amounts to forward all payment to Twitch.tv and will promptly remit such amounts to Twitch.tv.

**2.2. Additional Advertising Terms.** Additional terms and/or obligations of the Parties related to advertising, if any, shall be set forth in Exhibit B.

### **SECTION 3: Revenue; Fees; Payment Terms.**

**3.1. Right to Collect Fees.** Twitch.tv will have the exclusive right to collect all fees from third parties for Advertisements displayed against the Licensed Content and any Sponsorship Opportunities. Twitch.tv will pay Content Provider the fees described in Exhibit B.

**3.2. Payment Terms.** All fees payable by Twitch.tv to Content Provider will be paid to Content Provider on a monthly basis, within forty-five (45) days after the end of each calendar month, in United States Dollars. Twitch.tv will not be obligated to make a payment if the total amount to be paid to Content Provider under this Agreement is less than \$100, and may instead accrue such payment obligation until such time as its overall obligation to Content Provider is at least \$100. Each payment will be accompanied by an accurate accounting statement containing sufficient information to allow the Content Provider to confirm the accuracy of the payments rendered. Twitch.tv shall have the right to offset any amounts owing by Twitch.tv to Content Provider against any amounts owing from Content Provider to Twitch.tv, whether under this Agreement or otherwise.

**3.3. Taxes.** Twitch.tv shall have the right to withhold from any payment to Content Provider under this Agreement any taxes required to be withheld by Twitch.tv under the applicable laws of the United States or any other country, state, territory or jurisdiction and to remit such amounts to the taxing agency or authority. Content Provider shall pay, indemnify, and hold Twitch.tv harmless from all sales, use, personal property and other taxes resulting from this Agreement, payments made to Content Provider, or any activities under this Agreement, excluding taxes based on Twitch.tv's net income, including penalties and interest.

### **SECTION 4: Obligations of the Parties.**

#### **4.1. Twitch.tv's Obligations.**

**4.1.1. Delivery of Twitch.tv Player.** Twitch.tv will provide to Content Provider the ability to download the Twitch.tv Player within three (3) days after the Effective Date. Thereafter, Twitch.tv will provide Content Provider with updates, bug fixes, and new versions of any aspect of the Twitch.tv Player at the time they are made generally available to Twitch.tv's other customers.

**4.1.2. Promotion of Licensed Content.** Twitch.tv will: (i) market and promote the Licensed Content within the Twitch.tv Websites; and (ii) provide one or more links from the Twitch.tv Websites to one or more of the Content Provider Websites displaying the Licensed Content. The Parties shall mutually agree upon the nature, position and quantity of the placement of such link(s).

**4.1.3. Tracking and Reporting.** Twitch.tv shall be responsible for tracking the reporting of Advertising served through the Player in connection with the display of Licensed Content. Twitch.tv will, on a monthly basis, provide Content Provider with the following usage data relating to the display and broadcast of the Licensed Content ("Usage Data"): total views, total matched views (views on which a pre-roll advertisement was served), revenue and effective CPM, all on a per video basis. The Parties acknowledge and agree that all such Usage Data is and shall at all times be exclusively owned by Twitch.tv and shall remain Twitch.tv's Confidential Information (defined in Section 6.1).

**4.1.4. Content Provider Branding.** Twitch.tv shall not remove, modify, obscure or edit any

Content Provider branding embedded in or on the Licensed Content such as a watermark, and Twitch.tv shall not add any of its own or third party branding to the Licensed Content, provided that Twitch.tv shall have the right to include its own or third party branding around the Licensed Content on the Twitch.tv Player.

**4.1.5. No Bandwidth or Viewer Limits.** Twitch.tv will not impose any bandwidth or viewer limits on any channels which may be established by Content Provider on the Twitch.tv Websites.

**4.1.6. Archiving of Licensed Content.** Twitch.tv will archive the Licensed Content and make such Licensed Content available for streaming or download, via the Twitch.tv Player, from the Twitch.tv Websites.

**4.1.7. Additional Obligations.** Additional obligations of Twitch.tv, if any, shall be set for in Exhibit C.

**4.2. Content Provider's Obligations.**

**4.2.1.** With respect to Licensed Content which will be broadcast on a real-time live basis, Content Provider will transmit, deliver and otherwise provide such Licensed Content to Twitch.tv as the event is being recorded, streamed or broadcast.

**4.2.2.** Content Provider will: (i) market and promote the Licensed Content within the Content Provider Websites; (ii) provide one or more links from the Content Provider Websites to the Twitch.tv Websites, and the Parties shall mutually agree upon the nature, position and quantity of the placement of such link(s); and (iii) during the Term, not broadcast, stream, distribute, exhibit or otherwise make available the Licensed Content in any way on the Content Provider Websites except via the Player.

**4.2.3.** Content Provider is responsible for obtaining and maintaining, will obtain and will be fully liable for failing to obtain and maintain, all necessary rights, approvals, permits and/or licenses related to the use, broadcasting, streaming, distribution and exhibition of the Licensed Content via the Player on the Twitch.tv Websites, the Partner Websites and Content Provider Websites during the Term.

**4.2.4.** Content Provider will timely provide the Licensed Content described in Exhibit A and any other content agreed by the Parties to be included within the scope of this Agreement, which shall be deemed part of the Licensed Content for all purposes under this Agreement.

**4.2.5.** Content Provider will archive the Licensed Content, directly or via third parties, and make such Licensed Content available for streaming or download, via the Player.

**4.2.6. Removal of Content.** Upon Content Provider becoming aware (whether by Twitch.tv or otherwise) of an actual or potential claim by a third party alleging that any content appearing with the Content Provider Channels (a) infringes or misappropriates the Intellectual Property Rights of a third party, (b) violates such third party's privacy rights or publicity rights, or (c) is unlawful, libelous, defamatory, pornographic or obscene, Content Provider shall promptly notify Twitch.tv and remove such content from the Content Provider Channels. Content Provider shall not include within, and at Twitch.tv's request shall immediately remove from, the Content Provider Channels any content or annotations (or similar features) that conflict with the rights granted to Twitch.tv under this Agreement or interfere with Twitch.tv's efforts to sell Advertisements displayed against the content appearing within the Content Provider Channels.

**4.2.7. Additional Obligations.** Additional obligations of Content Provider, if any, shall be set for in Exhibit C.

**4.3. Mutual Obligations.**

**4.3.1. Automated Impressions.** Neither Party shall, and shall not authorize, solicit or encourage any third party to directly or indirectly generate queries, impressions or clicks on any ad(s) or to obtain access to Licensed Content or any other content through any automated, deceptive, fraudulent or other invalid means, including but not limited to through repeated manual clicks, the use of robots or other automated query tools and/or computer generated search requests, and/or the fraudulent use of other search engine optimization services and/or software.

**4.3.2. Cooperation.** Each Party agrees to use commercially reasonable efforts to provide all reasonable cooperation to the other Party in connection with the display and broadcasting of the Licensed Content and Advertisements as contemplated by this Agreement.

**4.3.3. Additional Mutual Obligations.** Additional mutual obligations of the parties, if any, shall be set for in Exhibit C.

**SECTION 5: Term and Termination.**

**5.1. Term.** The term of this Agreement is set forth on the Cover Sheet to this agreement.

**5.2. Termination for Breach.** If either Party materially breaches any of its obligations under this Agreement, the non-breaching Party, at its option, shall have the right to terminate this Agreement by written notice to the breaching Party unless, within thirty (30) calendar days after receipt of written notice of such breach by the breaching Party, the breaching Party cures such breach.

**5.3. Termination for Bankruptcy.** Either Party may terminate this Agreement immediately upon written notice to the other Party, in the event that the other Party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy or insolvency law (whether domestic or foreign), has wound up or liquidated, voluntarily or otherwise, or ceases to do business in the normal course. The affected Party shall promptly notify the other Party in the event of the occurrence of any of the foregoing events.

**5.4. Return of Confidential Information Upon Termination or Expiration of Agreement.** Upon any termination or expiration of this Agreement, each Party shall promptly return or destroy all of the other Party's Confidential Information, including any copies or embodiments thereof, except to the extent that a Party is required to keep such Confidential Information in order to fulfill an obligation to a viewer of Licensed Content for Subscription Broadcasts of the Licensed Content purchased by the viewer prior to the effective date of termination. Each Party shall have the right to request, and the other Party shall provide, written certification from an executive officer of the other Party stating that all such Confidential Information has been returned or destroyed.

**5.5. Effect of Termination.** Upon any termination or expiration of this Agreement, all licenses granted by the Parties shall immediately terminate (except to the extent that a Party is required to fulfill an obligation to a viewer of Licensed Content for Subscription Broadcasts of the Licensed Content purchased by the viewer prior to the effective date of termination). Termination of this Agreement by either Party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either Party from any liability for breach of such Party's obligations under this Agreement. Neither Party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms. Either Party's termination of this Agreement shall be without prejudice to any other right or remedy that it may have at law or in equity, and shall not relieve either Party of breaches occurring prior to the effective date of such termination. All other provisions of this Agreement shall survive the expiration or any termination of this Agreement.

## **SECTION 6: Confidentiality.**

**6.1. Confidential Information.** The Parties acknowledge that, in the course of the performance of this Agreement, each Party (a "Recipient") may have access to or obtain proprietary or confidential information or materials from the other Party (the "Discloser"), whether in oral, written, graphic, electronic or other form, that are marked, described as or otherwise designated as proprietary or confidential, or provided under circumstances reasonably indicating that the information or materials are proprietary or confidential ("Confidential Information"). Confidential Information includes any process, technique, algorithm, formula or method; any computer program (source and object code), design, drawing, data, research results, work in process and documentation; any engineering, marketing, servicing, financing or personnel material; and any other information or material relating to the Discloser's present or future products, services, advertisers, partners, revenues, suppliers, clients, customers, employees, investors or business; and any other information or materials that the Discloser has received from third parties and is obligated to treat as confidential or proprietary.

**6.2. Obligations.** The Recipient agrees to: (a) retain in confidence the Confidential Information of the Discloser; (b) restrict the use of and access to the Confidential Information of the Discloser to employees of the Recipient to whom disclosure is necessary in order for the Recipient to perform its express obligations, to enforce its rights, and to exercise the licenses granted to the Recipient under this Agreement; (c) appropriately bind each such employee to whom any such disclosure is made to hold the Confidential Information of the Discloser in confidence consistent with the obligations under this Agreement; and (d) not sell, lease, assign, transfer or otherwise disclose the Confidential Information of the Discloser to any other third party. Without limiting the foregoing, the Recipient agrees that it shall treat the Confidential Information of the Discloser with at least the same degree of care as it would its own highly sensitive confidential or proprietary information. The terms of this Agreement will be deemed the Confidential Information of Twitch.tv. Notwithstanding anything stated herein, either Party may issue a press release or other marketing materials referencing the existence of the general nature of the relationship between the Parties under this Agreement, but not disclosing the specific terms of this Agreement, including without limitation the revenue sharing terms.

**6.3. Exclusions.** Neither Party shall have any obligation under Section 6.2, with respect to any information or materials of the Discloser that: (a) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known or available; (b) is or was known by the Recipient at or before the time such

information or material was received from the Discloser, as evidenced by the Recipient's tangible (including written or electronic) records, without any restriction on use or disclosure; (c) is furnished to the Recipient by a third party that is not under an obligation of confidentiality to the Discloser with respect to such information or material and did not obtain it, directly or indirectly, from the Discloser; or (d) is independently developed by the Recipient without the use, reference or access to the Discloser's Confidential Information, and without any breach of this Agreement, as evidenced by the Recipient's contemporaneous tangible (including written or electronic) records. Notwithstanding Section 6.2, if the Recipient is required to disclose Confidential Information of the Discloser pursuant to a court order or other requirement of applicable law, the Recipient shall provide the Discloser with prompt written notice of any such requirement (in any event reasonably prior to the time of such disclosure by the Recipient), shall reasonably cooperate with the Discloser to limit the scope of the disclosure required by court order or applicable law, and shall disclose the Confidential Information only to the extent required by the court order or requirement of applicable law.

**6.4. Injunctive Relief.** Each Party acknowledges and agrees that, in the event of a breach of Sections 6.2, or any unauthorized use, reproduction, distribution or disclosure ("Unauthorized Use") of any Confidential Information of the Discloser, that any such breach or Unauthorized Use will allow the Recipient or third parties to compete unfairly with the Discloser resulting in irreparable harm to the Discloser that would be difficult to measure; and, therefore, that upon any such breach or Unauthorized Use, or threat thereof, the Discloser shall be entitled to injunctive and other appropriate equitable relief (without the necessity of proving actual damages or of posting a bond), in addition to whatever remedies it may have at law.

## **SECTION 7: Representations and Warranties.**

**7.1. Mutual.** Each Party represents and warrants that: (a) it has the necessary rights, licenses, and/or permissions to grant the licenses and rights and to perform its obligations hereunder; (b) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts required hereunder; and (c) the execution of this Agreement by such Party, and the performance by such Party of its obligations and duties hereunder, do not and will not violate any agreement to which such Party is a Party or by which it is otherwise bound.

**7.2. Content Provider.** Content Provider represent and warrants that, as applicable, the Licensed Content (used, broadcast, streamed, distributed, and otherwise exhibited in accordance with this Agreement), the Content Provider Websites, and/or the Content Providers Channels (including all content appearing within): a) do and will comply with all applicable laws, rules, and regulations (including without limitation and relevant data protection or privacy laws); b) do not and will not infringe or misappropriate the Intellectual Property Rights of a third party; c) do not violate a third party's privacy rights or publicity rights; d) are not unlawful, libelous, defamatory, pornographic or obscene; and e) do and will not include content, and are not and will not be of a subject matter, that is prohibited by the Content Guidelines described on [Exhibit E](#).

**7.3. Twitch.tv.** Twitch.tv represents and warrants that the Twitch.tv Player (used in accordance with this Agreement) and the Twitch.tv Websites: (a) do and will comply with all applicable laws, rules and regulations (including without limitation any relevant data protection or privacy laws); (b) do not and will not infringe or misappropriate the Intellectual Property Rights of a third party; and (c) do not contain viruses, Trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines.

**7.4. Disclaimers.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT AND EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING SUCH SUBJECT MATTER.

## **SECTION 8: Indemnity; Limitations of liability.**

**8.1. Indemnification by Twitch.tv.** Twitch.tv agrees to indemnify, defend (if requested by Content Provider) and hold Content Provider harmless from and against any and all liability, loss, damage, claim, cause of action or other cost (including, without limitation reasonable legal fees and expenses), arising out of or related to any third party claim alleging that the authorized use by Content Provider of the Twitch.tv Player (in the form provided by Twitch.tv to Content Provider) infringes or misappropriates the Intellectual Property Rights of such third party.

**8.2. Indemnification by Content Provider.** Content Provider agrees to indemnify, defend (if requested by Twitch.tv) and hold Twitch.tv harmless from and against any and all liability, loss, damage, claim, cause of action or other cost (including, without limitation reasonable legal fees and expenses), arising out of or related to any third party claim alleging that the Licensed Content and/or the Content Provider Websites and/or the Content Provider Channels (including content appearing within): a) infringe or misappropriate the Intellectual Property Rights of a third party; b) violate a third party's privacy rights or publicity rights; and/or c) are unlawful, libelous, defamatory, pornographic or obscene.

**8.3. Conditions to Indemnity.** The obligations of either Party to provide indemnification under this Section shall be contingent upon the indemnified Party: (a) providing the indemnifying Party with prompt written notice of any claim for which indemnification is sought, provided, however, that the failure to give timely notice will not relieve the indemnifying Party of its obligations under this Section except to the extent that such untimely notice impairs the ability of the indemnifying Party to defend or settle the Claim; and (b) reasonably cooperating with the indemnifying Party (at the indemnifying Party's expense) and providing reasonable assistance and information. Further, if the Party seeking indemnification wishes for the indemnifying Party to directly defend the claim, the Party seeking indemnification will authorize the indemnifying Party to control the defense and settlement of such claim, provided that in no event shall the indemnifying Party enter into any settlement or agree to any disposition that contains an admission of liability or wrongdoing on the part of the indemnified Party, otherwise prejudices the rights of the indemnified Party, or imposes a material obligation on the indemnified Party that is not wholly discharged by the indemnifying Party, without first obtaining the prior written consent of the indemnified Party. If the Party seeking indemnification opts to undertake the defense of the claim: (a) the indemnifying Party will bear the reasonable expenses (including reasonable attorneys fees and litigation costs) of the indemnified Party in defending the claim; and (b) the indemnified Party shall not enter into any settlement or agree to any disposition that contains an admission of liability or wrongdoing on the part of the indemnifying Party or otherwise prejudices the rights of the indemnified Party, without the prior written consent of the indemnifying Party, which may not be unreasonably withheld, conditioned or delayed.

**8.4. Limitation of Liability.** EXCEPT FOR A PARTY'S OBLIGATIONS UNDER THIS SECTION (INDEMNITY), OR A BREACH BY A PARTY OF ITS OBLIGATIONS UNDER SECTION 6 (CONFIDENTIALITY), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY: (a) FOR LOST REVENUE, LOST PROFITS, LOST BUSINESS, OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES); OR (b) UNDER ANY THEORY OF LIABILITY, AN AGGREGATE AMOUNT EXCEEDING FIFTY THOUSAND US DOLLARS (US \$50,000).

#### **SECTION 9: General.**

**9.1. Relationship of Parties.** Both Parties are, and shall remain at all times, independent contractors, and nothing in this Agreement will be construed to create an agency, employment, fiduciary, representative or any other relationship between the Parties. Content Provider understands and agrees that it shall not have authority to bind Twitch.tv in any manner, or enter into any agreement or incur any liability on behalf of Twitch.tv.

**9.2. Assignment.** Twitch.tv shall be entitled to assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement and any of its rights or obligations of this Agreement, but Content Provider shall not and shall not have the right to assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Twitch.tv. Notwithstanding the foregoing, either Party may assign this Agreement in its entirety without the prior written consent of the other Party solely in connection with a merger, consolidation, corporate reorganization, sale of all or substantially all of such Party's assets of the business to which such Party's services relate, sale of stock, change of name or like event, provided that the assigning Party provides prompt written notice of such assignment to the other Party and the assignee agrees in writing to be bound by this Agreement. Except as provided herein, any purported assignment, transfer or delegation by Content Provider shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

**9.3. Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed in accordance with the laws of the State of California, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the laws of the State of California to the rights and duties of the Parties. Any legal suit, action or proceeding arising out of or relating to this Agreement by a Party shall be resolved by litigation in the courts located within San Francisco County in the State of California. The Parties hereby consent to the exclusive jurisdiction of such courts, will accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to them.

**9.4. Further Assurances.** Content Provider will take or cause to be taken such further actions, and will execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments, and will obtain such consents, as may be reasonably required or requested by Twitch.tv in order to effectuate fully the purposes, terms and conditions of this Agreement.

**9.5. Force Majeure.** Neither Party will be deemed to be in default hereunder for failure to perform any of its obligations under this Agreement in the event such failure results from acts or omissions of the other Party or third parties, natural disasters, acts of terrorism, riots, war, civil disorder, strikes, labor disputes, Internet or other telecommunication failures or "brown-outs," telecommunication failures or other equipment failures, electric power failures, or any other causes beyond that Party's reasonable control that were not due to the negligence or willful misconduct of such Party (each, a "Force Majeure") for as long as such Force Majeure continues. The Party affected

by the Force Majeure event shall notify the other Party immediately after its occurrence and shall use reasonable efforts to remedy that situation as well as to minimize its effects.

**9.6. Waiver.** The waiver by either Party of a breach of or a default under any provision of this Agreement shall be in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

**9.7. Severability.** Any determination that any provision of this Agreement or any application thereof is invalid, illegal or unenforceable in any respect in any instance shall not affect the validity, legality and enforceability of such provision in any other instance, or the validity, legality, or enforceability of any other provision of this Agreement.

**9.8. Captions and Section Headings.** The captions and Section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

**9.9. Notices.** Any notice required to be given under this Agreement shall be in writing and delivered personally, by facsimile transmission, by email transmission, by express overnight mail or by certified U.S. mail to the other designated Party at the postal address, facsimile or email address set forth after each Party's signature (or such other postal address, facsimile or email address provided by each Party in accordance with this Section). Notices shall be deemed effective (a) on the date of delivery, if delivered personally; (b) on the date of transmission, if sent by facsimile transmission, provided that the sending facsimile machine confirms in writing the receipt of the full facsimile transmission; (c) on the date of email transmission, if sent by email and a response email or other confirmation by the recipient of the receipt of such email is provided; (d) one (1) business day after deposit, if sent by express overnight courier, with written confirmation of receipt; or (e) two (2) business days after posting, if sent by certified U.S. mail.

**9.10. Entire Agreement; Amendment.** This Agreement contains the complete understanding between the Parties with respect to their respective subject matter hereof and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, including any agreements between the Parties governing the licensing of content by Content Provider to Twitch.tv. This Agreement may not be amended or supplemented in any manner by any terms which may be included within any documents exchanged by the Parties, including without limitation purchase orders, but may only be amended by a written amendment signed by both Parties specifically referring to this Agreement and expressly identifying the provision(s) within this Agreement being amended. No changes, amendments, or alterations to this Agreement shall be effective unless signed by duly authorized representatives of both Parties, except as expressly provided herein.

**9.11. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signed copy of this Agreement or counterpart thereof, delivered by facsimile transmission or by e-mail with an attachment in portable document format (PDF), shall for all purposes be treated as if it were delivered containing an original manual signature of the Party whose signature appears in the facsimile or PDF document, and shall be binding upon such Party in the same manner as though an originally signed copy had been delivered.

**9.12. Modifications.** This Agreement may not be modified or amended except by written instrument specifically referring to this Agreement and duly executed by both Parties.

## **EXHIBIT A – Licensed Content**

Version: November 16, 2012

**1.** **Licensed Content:** means any and all videogaming-related content which is developed, created and/or produced by Content Provider or its players and teams (as applicable). Licensed Content includes all content which is displayed, streamed or provided via the following channels on the Twitch.tv Websites:

**2. Twitch.tv Websites:**

[www.justin.tv](http://www.justin.tv)  
[www.twitch.tv](http://www.twitch.tv)

**3. Partner Websites:**

**4. Content Provider Websites:**

[www.twitch.tv/phantoml0rd](http://www.twitch.tv/phantoml0rd)

**5. Minimum Licensed Content Requirements:** Content Provider will provide the minimum amount of Licensed Content, on a daily, weekly or other basis, as set forth below. The Parties will establish a mutually acceptable secure method for the transmission of the Licensed Content to Twitch.tv under this Agreement.

5.1

**6. Quality, High-Definition and Other Requirements:**

None

## EXHIBIT B – Fees

Version: November 16, 2012

### **1. Revenue Share for Advertising and Subscription Revenue**

**1.1. Revenue Share for Advertising.** The revenues obtained from the display and broadcast of Advertising, shall be allocated between the Parties, as follows:

**1.1.1. Gross Advertising Revenues.** "Gross Advertising Revenues" means any and all revenues actually received by Twitch.tv for the display or broadcast of any Advertising in connection with the Licensed Content, whether such Licensed Content is made available from the Content Provider Websites, Twitch.tv Websites or Partner Websites, less any chargebacks or fraudulent transactions which require a refund of revenues previously received. The Parties agree that the advertising revenues directly obtained from advertising which is displayed as part of the background footage of the Licensed Content (e.g., product placement, in-stream commercials, in-game logos and signs and advertising in the background of the footage of the Licensed Content) shall be excluded from Gross Revenues and shall not be subject to revenue sharing by the Parties.

**1.1.2. Revenue Share for Gross Advertising Revenues.** The Gross Advertising Revenues share owed to Content Provider will be paid to Content Provider by Twitch.tv at a fixed CPM ("Cost per Thousand" Advertising Impressions) rate on delivered Advertising Impressions. For those Content Provider channels are listed in Exhibit A, Twitch.tv will pay Content Provider a flat USD \$5.00 CPM on delivered ad impressions (i.e., \$5.00 per 1000 delivered ad impressions shown against Content Provider's Content).

**1.2. Subscription Services.** Twitch.tv shall have the exclusive right to offer the Licensed Content to end users and viewers of the Twitch.tv Websites and Partner Websites on a subscription, pay-per-view or other payment basis, which may include high-definition streaming and other premium services ("Subscription Services"). Twitch.tv shall have the exclusive right to collect any and all payments from end users and viewers who purchase the Subscription Services. As used herein, Subscription Services includes both: (i) Licensed Content which is bundled with other content (whether owned or licensed by Twitch.tv and/or third parties) for which a single subscription, pay-per-view or similar fee is charged to the end users and viewers ("Bundled Licensed Content"), and (ii) Licensed Content which has not been bundled with any other content for which a single subscription, pay-per-view or similar fee is charged to the end users and viewers ("Unbundled Licensed Content"). With respect to Bundled Licensed Content, Twitch.tv may offer the Licensed Content through its Subscription Services at such rates and subject as is reasonably agreed by the Parties. With respect to Unbundled Licensed Content, Twitch.tv may offer the Licensed Content through its Subscription Services at such rates and subject as is reasonably agreed by the Parties, provided that if the Parties are unable to agree on a rate, the default subscription rate of \$4.99 per channel will apply.

**1.3. Revenue Share for Subscription Services.** The revenues obtained from Subscription Services, shall be allocated between the Parties, as follows:

**1.3.1. "Gross Subscription Revenues"** means the total revenues actually received by Twitch.tv from viewers and end users who have purchased Subscription Services, less any chargebacks or fraudulent transactions which require a refund of revenues previously received. Twitch.tv will, in good faith, allocate to the Licensed Content a reasonable portion of the subscription, pay-per-view or similar fees charged to end users and viewers of the Bundled Licensed Content, and such amount shall be deemed the "Gross Subscription Revenues" for purposes of calculating each Party's share of the Gross Subscription Revenues attributable to the Bundled Licensed Content in accordance with the percentages in Section 1.3.2 below. If the subscription, pay-per-view or similar fees charged to end users and viewers are for access to solely the Licensed Content (which is not bundled with other content), then the entire Gross Subscription Revenues will be allocated to the Licensed Content for purposes of calculating each Party's share of the Gross Subscription Revenues in accordance with the percentages in Section 1.3.2 below.

**1.3.2. Revenue Share for Gross Subscription Revenues.** The Gross Subscription Revenues allocated to the Bundled Licensed Content will be split 70%/30% between the Parties. Twitch.tv, who shall have the exclusive right to collect the revenues from viewers and end users who have purchased Subscription Services, will pay Content Provider its share of the Gross Subscription Revenues, on a monthly basis, within forty-five (45) days following the end of each calendar month in which Gross Subscription Revenues are received by Twitch.tv.

### **2. Sponsorship:** Twitch will provide a one-time sponsorship as follows:

**2.1.** A single payment of USD \$7,990.39, payable within 30 days upon execution of this Agreement

## **EXHIBIT C – Specific Terms**

Version: November 16, 2012

### **1. Exclusivity**

**1.1. Exclusivity.** The parties acknowledge that certain Licensed Content has been created and published prior to the Effective Date and that the license granted to Twitch.tv in Section 2.1Error: Reference source not found with respect to such Licensed Content shall be non-exclusive. With respect to Licensed Content which has either not been published prior to the Effective Date or which is created after the Effective Date (the "Exclusive Content"), the license granted to Twitch.tv in Section 1 of the Agreement shall be exclusive (even as to Content Provider) to Twitch.tv for the Initial Broadcast of such Exclusive Content for a period of 168 consecutive hours (i.e., one week), starting from the time of the Initial Broadcast of such Licensed Content by Twitch.tv on the Twitch.tv Websites and Partner Websites (the "Exclusivity Period"), such that Content Provider shall not, nor permit or authorize any third party to, broadcast, stream, distribute, exhibit and otherwise make available the Exclusive Content in any manner except that Content Provider shall have the right to make the Exclusive Content available, solely via the Player, from the Content Provider Websites and the websites of third parties, to the extent that any of the foregoing websites do not contain any content or are not of a nature that is prohibited by the guidelines attached hereto as Exhibit F. Twitch.tv will notify Content Provider of the time at which the Exclusivity Period has commenced. After the Exclusivity Period, the license to the Exclusive Content shall become non-exclusive and Content Provider shall have the right to broadcast, stream, distribute, exhibit and otherwise make available the Exclusive Content in any manner and format desired by Content Provider.

### **2. Obligations of the Parties**

#### **2.1. Content Provider's Additional Obligations.**

**2.1.1.** Content Provider will be responsible for allowing Twitch.tv to include customary attribution to Twitch.tv on the Player on the Content Provider Websites, and shall not, nor permit any third party to, remove, modify, obscure or edit any Content Provider branding embedded or included within the Player.

#### **2.2. Mutual Obligations - Promotional Activities.** Parties shall engage in mutual promotion.

##### **2.2.1. Twitch.tv will provide the following:**

**2.2.1.1.** Consideration for inclusion in the Twitch.tv front page promotional rotation for all Content Provider channels, as outlined in Exhibit A, at Twitch.tv's sole discretion.

**2.2.1.2.** Consideration for inclusion in the Twitch.tv weekly newsletter, at Twitch.tv's sole discretion.

**2.2.1.3.** Consideration for promotion on the Twitch.tv Twitter and Facebook

**2.2.1.4.** One-time monetary sponsorship as described in Exhibit B.

##### **2.2.2. Content Provider will provide the following:**

**2.2.2.1.** Twitch.tv branding on the Content Provider's website as outlined in Exhibit A.

**2.2.2.2.** Twitch.tv branding on the Content Provider's channel pages as outlined in Exhibit A.

A.

## **EXHIBIT D – Intellectual Property Rights**

Version: November 16, 2012

**1.1. By Content Provider.** As between the Parties, Content Provider exclusively owns and shall retain all right, title and interest (including all Intellectual Property Rights) in and to: (a) the Licensed Content; (b) the Content Provider Websites (except for the Twitch.tv Player and any other materials or content provided by Twitch.tv which is included, displayed or broadcast on the Content Provider Websites); (c) Content Provider Marks and all other trademarks, trade names, name, logos, URLs or branding owned or controlled by Content Provider; (d) subject to the rights and permissions granted to Twitch.tv hereunder, the Content Provider Channels and all content appearing therein; and (e) all modifications and all derivative works of each of the foregoing, whether made by Twitch.tv or Content Provider.

**1.2. By Twitch.tv.** As between the Parties, Twitch.tv exclusively owns and shall retain all right, title and interest (including all Intellectual Property Rights) in and to: (a) the Twitch.tv Player; (b) the Twitch.tv Websites (except for the Licensed Content which is included, displayed or broadcast on the Twitch.tv Websites); (c) Twitch.tv Marks and all other trademarks, trade names, name, logos, URLs or branding owned or controlled by Twitch.tv; (d) the Twitch.tv Network; and (e) all modifications and derivative works of each of the foregoing, whether made by Content Provider or Twitch.tv.

## **EXHIBIT E – Content Guidelines**

Version: November 16, 2012

### **Prohibited Content and Subject Matter Types:**

- advertisements for religious programming, political matters
- 900 numbers
- X-rated material
- habit-forming drugs, drug related paraphernalia
- herbal remedies or "miracle cure" products
- tobacco products
- any adult-oriented products or services (including adult-oriented pay per view programs and male enhancement products)
- salacious products or services or other material which would generally be considered obscene or indecent
- content that a reasonable person would deem objectionable, indecent, vulgar or offensive
- content which promotes discrimination, hate, violence, the use of illegal substances, illegal activity, mail fraud, pyramid schemes, or investment opportunities or advice not permitted by applicable law
- content which is unlawful, pornographic, libelous, defamatory, or violates a third party's privacy or publicity rights
- content which constitutes hate speech
- content which discriminates, ridicules, advocates against, harasses, or attacks an individual or group on the basis of age, color, national origin, race, religion, sex, sexual orientation, gender identity, or disability
- any other activity that contravenes any applicable laws or regulations (including poker, lotteries, gambling products or other wagering activity).

N/A

## **EXHIBIT F – Definitions**

Version: November 16, 2012

In addition to the definitions appearing elsewhere in this Agreement, when used in this Agreement, the following terms shall have the following meanings:

- 1.1. "**Advertisements**" means any and all advertisements of any nature displayed in connection with the Licensed Content, whether within the Player, including pre-roll, mid-roll, post-roll and over-the-video advertisements, and other types of advertisements that are not or may later become available during the Term within the Player.
- 1.2. "**Content Provider Websites**" means the websites owned or operated by Content Provider set forth in Exhibit A and any successor sites.
- 1.3. "**Initial Broadcast**" means the initial broadcasting, streaming, distribution, or other exhibition of Licensed Content via the Internet, whether such Licensed Content is broadcast on a real-time, live basis as the subject event is occurring or such Licensed Content has been prerecorded and is being initially broadcast for the first time via any manner or method of streaming, distribution or other exhibition.
- 1.4. "**Intellectual Property Rights**" means all copyrights, trademarks (including all goodwill associated therewith), trade secrets, patents, moral rights, industrial rights and all other intellectual, proprietary and other rights, including without limitation, (a) all rights, whether existing now or in the future, whether statutory or common law, whether subject to protection under statute, regulation or common law, in any jurisdiction in the world, together with all national, foreign and state registrations, applications for registration and all renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisionals, reissues, substitutions and reexaminations); (b) all benefits, privileges, causes of action and remedies relating to any of the foregoing, whether before or hereafter accrued (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions); and (c) all rights to sue for all past, present and future infringements or other violations of any of the foregoing rights, and the right to settle and retain proceeds from any such actions.
- 1.5. "**Twitch.tv Websites**" means the websites now or later owned or operated by Twitch.tv and its affiliated entities and any successor site(s), including the websites set forth in Exhibit A.
- 1.6. "**Partner Websites**" means the websites owned or operated by Twitch.tv's partners, including the websites set forth in Exhibit A.
- 1.7. "**Subscription Broadcast**" means any broadcast, streaming, distribution, transmission, downloading (including video-on-demand), or other exhibition of the Licensed Content on a subscription, pay-per-view or other payment basis wherein the viewer pays a fee to view the Licensed Content. Subscription Broadcast may include high-definition streaming and other premium services.
- 1.8. "**Term**" has the meaning set forth in the Cover Sheet.

# **Exhibit 3**

## **AMENDMENT TO CONTENT LICENSE AND BASE NETWORK AGREEMENT**

This Amendment (the "Amendment"), dated as of April 1, 2014 (the "Amendment Effective Date"), by and between Twitch Interactive, Inc. ("Twitch") with offices at 225 Bush Street, 6<sup>th</sup> Floor, San Francisco, CA 94104 and James Varga ("Content Provider") modifies that certain Content License and Base Network Agreement entered into by and between the parties hereto dated November 1, 2012 (the "Agreement"), the terms of which are incorporated into this Amendment *mutatis mutandis*. Capitalized terms that are used but not defined in this Amendment shall have the meanings accorded to them in the Agreement.

### **1. AMENDMENT**

(a) The parties agree to renew the Term of the Agreement for a renewal term of two (2) years.

### **2. GENERAL**

#### **(a) Survival of Agreement**

Except as expressly amended by this Amendment, the Agreement, and all rights and obligations of the parties thereunder, shall remain in full force and effect. This Amendment shall not, except as expressly provided herein, be deemed to be a waiver or modification of any other terms or provisions of the Agreement.

#### **(b) Counterparts; Electronic Signature**

This Amendment may be executed in counterparts and by exchange of signature pages by electronic means. Each such counterpart shall be an original and together shall constitute but one and the same document.

#### **(c) Governing Law**

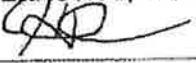
The Amendment shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules to the contrary.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Amendment Effective Date.

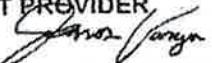
**AGREED AND ACCEPTED BY:**

**TWITCH INTERACTIVE, INC.**

By:   
Name: John Howell  
Title: Manager of Partnerships  
Date: 04 / 24 / 2014

**AGREED AND ACCEPTED BY:**

**CONTENT PROVIDER**

By:   
Name: James Varga  
Title: PhantomL0rd  
Date: 04 / 24 / 2014

**SIGNATURE PAGE TO AMENDMENT TO CONTENT LICENSE AND BASE NETWORK AGREEMENT**

# **Exhibit 4**



Home

# Steam Subscriber Agreement

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## STEAM® SUBSCRIBER AGREEMENT

This Steam Subscriber Agreement ("Agreement") is a legal document that explains your rights and obligations as a subscriber of Steam from either Valve Corporation ("Valve") or, as applicable, Valve SARL ("Valve EU"). Please read it carefully.

**SECTION 11 CONTAINS A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. IT MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT.**

### 1. REGISTRATION AS A SUBSCRIBER; APPLICATION OF TERMS TO YOU, YOUR ACCOUNT

Steam is an online service offered by Valve.

You become a subscriber of Steam ("Subscriber") by completing the registration of a Steam user account. This Agreement takes effect as soon as you indicate your acceptance of these terms.

#### A. Contracting Party

For any interaction with Steam other than the purchase of physical merchandise, your contractual relationship is with Valve. Except as otherwise indicated at the time of the transaction (such as in the case of purchases from another Subscriber in a Subscription Marketplace), any transactions for Subscriptions (as defined below) you make on Steam are being made from Valve.

Sales of physical merchandise ("Hardware") via Steam shall be governed by the following terms:

- Unless you are a Subscriber whose primary residence is in one of the member countries of the European Union (an "EU Subscriber"), any sales of Hardware on Steam are made from, and your contractual relationship is with, Valve.
- If you are an EU subscriber, any sales of Hardware on Steam are made from, and your contractual relationship is with, Valve EU, 26 Boulevard Royal, L-2449 Luxembourg.

#### B. Subscriptions, Content and Services

As a Subscriber you may obtain access to certain services, software and content available to Subscribers. The Steam client software and any other software, content and updates you download or access via Steam, including but not limited to Valve or third-party video games and in-game content, and any virtual items you trade, sell or purchase in a Steam Subscription Marketplace are referred to in this Agreement as "Content and Services". The rights to access and/or use any Content and Services accessible through Steam are referred to in this Agreement as "Subscriptions".

Each Subscription allows you to access particular Content and Services. Some Subscriptions may impose additional terms specific to that Subscription ("Subscription Terms") (for example, an end user license agreement specific to a particular game, or terms of use specific to a particular product or feature of Steam). Also, additional terms (for example, payment and billing procedures) may be posted on <http://www.steampowered.com> or within the Steam service ("Rules of Use"). Rules of Use include the Steam Online Conduct Rules [http://steampowered.com/index.php?area=online\\_conduct](http://steampowered.com/index.php?area=online_conduct) and the Steam Refund Policy [http://store.steampowered.com/store\\_refunds](http://store.steampowered.com/store_refunds). The Subscription Terms, the Rules of Use, and the Valve Privacy Policy (which can be found at <http://www.valvesoftware.com/privacy.html>) are binding on you once you indicate your acceptance of them or of this Agreement, or otherwise become bound by them as described in Section 8 (Amendments to this Agreement).

#### C. Your Account

When you complete Steam's registration process, you create a Steam account ("Account"). Your Account may also include billing information you provide to Valve for the purchase of Subscriptions, Content and Services and Hardware. You may not reveal, share or otherwise allow others to use your password or Account except as otherwise specifically authorized by Valve. Any use of your Account with your login and/or password is deemed made by you and you are responsible for it and for the security of your computer system. Valve is not responsible for the use of your password and Account or for all of the communication and activity on Steam that results from use of your login name and password. You may not sell or charge others for the right to use your Account, or otherwise transfer your Account, nor may you sell, charge others for the right to use, or transfer any Subscriptions other than if and as expressly permitted by this Agreement (including any Subscription Terms or Rules of Use) or as otherwise specifically permitted by Valve.

### 2. LICENSES

#### A. General Content and Services License

Steam and your Subscription(s) require the automatic download and installation of Content and Services onto your computer. Valve hereby grants, and you accept, a non-exclusive license and right, to use the Content and Services for your personal, non-commercial use (except where commercial use is expressly allowed herein or in the applicable Subscription Terms). This license ends upon termination of (a) this Agreement or (b) a Subscription that includes the license. The Content and Services are licensed, not sold. Your license confers no title or ownership in the Content and Services. To make use of the Content and Services, you must have a Steam Account and you may be required to be running the Steam client and maintaining a connection to the Internet.

For reasons that include, without limitation, system security, stability, and multiplayer interoperability, Steam may need to automatically update, pre-load, create new versions of or otherwise enhance the Content and Services and accordingly, the system requirements to use the Content and Services may change over time. You consent to such automatic updating. You understand that this Agreement

(including applicable Subscription Terms) does not entitle you to future updates, new versions or other enhancements of the Content and Services associated with a particular Subscription, although Valve may choose to provide such updates, etc. In its sole discretion.

#### B. Beta Software License

Valve may from time to time make software accessible to you via Steam prior to the general commercial release of such software ("Beta Software"). You are not required to use Beta Software, but if Valve offers it, you may elect to use it under the following terms. Beta Software will be deemed to consist of Content and Services, and each item of Beta Software provided will be deemed a Subscription for such Beta Software, with the following provisions specific to Beta Software:

- Your right to use the Beta Software may be limited in time, and may be subject to additional Subscription Terms;
- Valve or any Valve affiliate may request or require that you provide suggestions, feedback, or data regarding your use of the Beta Software, which will be deemed User Generated Content under Section 6 (User Generated Content) below; and
- In addition to the waivers and limitations of liability for all Software under Section 7 (Disclaimers, Limitations on Liability, No Guarantees, Limited Warranty) below, you specifically acknowledge that Beta Software contains errors, is not final and may create incompatibilities or damage to your computer, data and/or software. If you decide to install and/or use Beta Software, you shall only use it in compliance with its purposes, i.e. for testing and improvement purposes and in any case not on a system or for purposes where the malfunction of the Beta Software can cause any kind of damage. In particular, maintain full backups of any system that you choose to install Beta Software on.

#### C. License to Use Valve Developer Tools

Your Subscription(s) may include access to various Valve tools that can be used to create content ("Developer Tools"). Some examples include: the Valve software development kit (the "SDK") for a version of the computer game engine known as "Source" (the "Source Engine"); and the associated Valve Hammer editor. The Source® Filmmaker Software, or in-game tools through which you can edit or create derivative works of a Valve game. Particular Developer Tools (for example, The Source® Filmmaker Software) may be distributed with separate Subscription Terms that are different from the rules set forth in this Section. Otherwise, you may use the Developer Tools, and you may use, reproduce, publish, perform, display and distribute any content you create using the Developer Tools, however you wish, but solely on a non-commercial basis.

If you would like to use the Source Engine SDK or other Valve Developer Tools for commercial use, please contact Valve at [sourceengine@valvesoftware.com](mailto:sourceengine@valvesoftware.com)

#### D. License to Use Valve Game Content in Fan Art

Valve appreciates the community of Subscribers that creates fan art, fan fiction, and audio-visual works that reference Valve games ("Fan Art"). You may incorporate content from Valve games into your Fan Art. Except as otherwise set forth in this Section or in any Subscription Terms, you may use, reproduce, publish, perform, display and distribute Fan Art that incorporates content from Valve games however you wish, but solely on a non-commercial basis.

If you incorporate any third-party content in any Fan Art, you must be sure to obtain all necessary rights from the owner of that content. Commercial use of some Valve game content is permitted via features such as Steam Workshop or a Steam Subscription Marketplace. Terms applicable to that use are set forth in Section 3.D and 6.B below and in any Subscription Terms provided for those features.

To view the Valve video policy containing additional terms covering the use of audio-visual works incorporating Valve intellectual property or created with The Source® Filmmaker Software, please click here: <http://www.valvesoftware.com/videopolicy.html>

#### E. License to Use Valve Dedicated Server Software

Your Subscription(s) may contain access to the Valve Dedicated Server Software. If so, you may use the Valve Dedicated Server Software on an unlimited number of computers for the purpose of hosting online multiplayer games of Valve products. If you wish to operate the Valve Dedicated Server Software, you will be solely responsible for procuring any Internet access, bandwidth, or hardware for such activities and will bear all costs associated therewith.

#### F. Ownership of Content and Services

All title, ownership rights and intellectual property rights in and to the Content and Services and any and all copies thereof, are owned by Valve and/or its or its affiliates' licensors. All rights are reserved, except as expressly stated herein. The Content and Services is protected by copyright laws, international copyright treaties and conventions and other laws. The Content and Services contains certain licensed materials and Valve's and its affiliates' licensors may protect their rights in the event of any violation of this Agreement.

#### G. Restrictions on Use of Content and Services

You may not use the Content and Services for any purpose other than the permitted access to Steam and your Subscriptions, and to make personal, non-commercial use of your Subscriptions, except as otherwise permitted by this Agreement or applicable Subscription Terms. Except as otherwise permitted under this Agreement (including any Subscription Terms or Rules of Use), or under applicable law notwithstanding these restrictions, you may not, in whole or in part, copy, photocopy, reproduce, publish, distribute, translate, reverse engineer, derive source code from, modify, disassemble, decompile, create derivative works based on, or remove any proprietary notices or labels from the Content and Services or any software accessed via Steam without the prior consent, in writing, of Valve.

You are entitled to use the Content and Services for your own personal use, but you are not entitled to: (i) sell, grant a security interest in or transfer reproductions of the Content and Services to other parties in any way, nor to rent, lease or license the Content and Services to others without the prior written consent of Valve, except to the extent expressly permitted elsewhere in this Agreement (including any Subscription Terms or Rules of Use); (ii) host or provide matchmaking services for the Content and Services or emulate or redirect the communication protocols used by Valve in any network feature of the Content and Services, through protocol emulation, tunneling, modifying or adding components to the Content and Services, use of a utility program or any other techniques now known or hereafter developed, for any purpose including, but not limited to network play over the Internet, network play utilizing commercial or non-commercial gaming networks or as part of content aggregation networks, websites or services, without the prior written consent of Valve; or (iii) exploit the Content and Services or any of its parts for any commercial purpose, except as expressly permitted elsewhere in this Agreement (including any Subscription Terms or Rules of Use).

### 3. BILLING, PAYMENT AND OTHER SUBSCRIPTIONS

All charges incurred on Steam, and all purchases made with the Steam Wallet, are payable in advance and final, except as described in Section 7 below and in the Steam Refund Policy [http://store.steampowered.com/steam\\_refunds](http://store.steampowered.com/steam_refunds)

#### A. Payment Authorization

When you provide payment information to Valve or to one of its payment processors, you represent to Valve that you are the authorized user of the card, PIN, key or account associated with that payment, and you authorize Valve to charge your credit card or to process your payment with the chosen third-party payment processor for any Subscription, Steam Wallet funds, Hardware or other fees incurred by you. Valve or, as applicable, Valve EU may require you to provide your address or other information in order to meet their obligations under applicable tax law.

For Subscriptions purchased based on an agreed usage period, where recurring payments are made in exchange for continued use ("Recurring Payment Subscriptions"), by continuing to use the Recurring Payment Subscription you agree and reaffirm that Valve is authorized to charge your credit card (or your Steam Wallet, if funded), or to process your payment with any other applicable third-party payment processor, for any applicable recurring payment amounts. If you have purchased any Recurring Payment Subscriptions, you agree to notify Valve promptly of any changes to your credit card account number, its expiration date and/or your billing address, or your PayPal or other payment account number, and you agree to notify Valve promptly if your credit card or PayPal or other payment account expires or is canceled for any reason.

If your use of Steam is subject to any type of use or sales tax, then Valve may also charge you for those taxes, in addition to the Subscription or other fees published in the Rules of Use. The European Union VAT ("VAT") tax amounts collected by Valve or Valve EU reflect VAT due on the value of any Content and Services, Hardware or Subscription.

You agree that you will not use IP proxying or other methods to disguise the place of your residence, whether to circumvent geographical restrictions on game content, to purchase at pricing not applicable to your geography, or for any other purpose. If you do this, Valve may terminate your access to your Account.

#### B. Responsibility for Charges Associated With Your Account

As the Account holder, you are responsible for all charges incurred, including applicable taxes, and all purchases made by you or anyone that uses your Account, including your family or friends. If you cancel your Account, Valve reserves the right to collect fees, surcharges or costs incurred before cancellation. Any delinquent or unpaid Accounts must be settled before Valve will allow you to register again.

#### C. Steam Wallet

Steam may make available an account balance associated with your Account (the "Steam Wallet"). You may place funds in your Steam Wallet up to a maximum amount determined by Valve, by credit card, prepaid card, promotional code, or any other payment method accepted by Steam. Within any twenty-four (24) hour period, the total amount stored in your Steam Wallet plus the total amount spent out of your Steam Wallet, in the aggregate, may not exceed US\$2,000 or its equivalent in your applicable local currency – attempted deposits into your Steam Wallet that exceed this threshold may not be credited to your Steam Wallet until your activity falls below this threshold. Valve may change or impose different Steam Wallet balance and usage limits from time to time.

You will be notified by e-mail of any change to the Steam Wallet balance and usage limits within sixty (60) days before the entry into force of the said change. Your continued use of your Steam Account more than thirty (30) days after the entry into force of the changes, will constitute your acceptance of the changes. If you don't agree to the changes, your only remedy is to terminate your Steam Account or to cease use of your Steam Wallet. Valve shall not have any obligation to refund any credits remaining on your Steam Wallet in this case.

You may use Steam Wallet funds to purchase Subscriptions, including by making in-game purchases while Steam Wallet transactions are enabled and Hardware. Funds added to the Steam Wallet are non-refundable and non-transferable. Steam Wallet funds do not constitute a personal property right, have no value outside Steam and can only be used to purchase Subscriptions and related content via Steam (including but not limited to games and other applications offered through the Steam Store, or in a Steam Subscription Marketplace); and Hardware. Steam Wallet funds have no cash value and are not exchangeable for cash. Steam Wallet funds that are deemed undelivered property may be turned over to the applicable authority.

#### D. Trading and Sales of Subscriptions Between Subscribers

Steam may include one or more features or sites that allow Subscribers to trade, sell or purchase certain types of Subscriptions (for example, license rights to virtual items) with, to or from other Subscribers ("Subscription Marketplaces"). An example of a Subscription Marketplace is the Steam Community Market. By using or participating in Subscription Marketplaces, you authorize Valve, on its own behalf or as an agent or licensee of any third-party creator or publisher of the applicable Subscriptions in your Account, to transfer those Subscriptions from your Account in order to give effect to any trade or sale you make.

Valve may charge a fee for trades or sales in a Subscription Marketplace. Any fees will be disclosed to you prior to the completion of the trade or sale.

If you complete a trade, sale or purchase in a Subscription Marketplace, you acknowledge and agree that you are responsible for taxes, if any, which may be due with respect to your transactions, including sales or use taxes, and for compliance with applicable tax laws. Proceeds from sales you make in a Subscription Marketplace may be considered income to you for income tax purposes. You should consult with a tax specialist to determine your tax liability in connection with your activities in any Subscription Marketplace.

You understand and acknowledge that Valve may decide to cease operation of any Subscription Marketplace, change the fees that it charges or change the terms or features of the Steam Subscription Marketplace. Valve shall have no liability to you because of any inability to trade Subscriptions in the Steam Trading Marketplace, including because of discontinuation or changes in the terms, features or eligibility requirements of any Subscription Marketplace.

You also understand and acknowledge that Subscriptions traded, sold or purchased in any Subscription Marketplace are license rights, that you have no ownership interest in such Subscriptions, and that Valve does not recognize any transfers of Subscriptions (including transfers by operation of law) that are made outside of Steam.

#### E. Retail Purchase

Valve may offer or require a Subscription for purchasers of retail packaged product versions or OEM versions of Valve products. The "CD-Key" or "Product Key" accompanying such versions is used to activate your Subscription.

#### F. Steam Authorized Resellers

You may purchase a Subscription through an authorized reseller of Valve. The "Product Key" accompanying such purchase will be used to activate your Subscription. If you purchase a Subscription from an authorized reseller of Valve, you agree to direct all questions regarding the Product Key to that reseller.

#### G. Free Subscriptions

In some cases, Valve may offer a free Subscription to certain services, software and content. As with all Subscriptions, you are always responsible for any Internet service provider, telephone, and other connection fees that you may incur when using Steam, even when Valve offers a free Subscription.

#### H. Third Party Sites

Steam may provide links to other third party sites. Some of these sites may charge separate fees, which are not included in and are in addition to any Subscription or other fees that you may pay to Valve. Steam may also provide access to third-party vendors, who provide content, goods and/or services on Steam or the Internet. Any separate charges or obligations you incur in your dealings with those third parties are your responsibility. Valve makes no representations or warranties, either express or implied, regarding any third party site. In particular, Valve makes no representation or warranty that any service or subscription offered via third-party vendors will not change or be suspended or terminated.

### 4. ONLINE CONDUCT, CHEATING AND ILLEGAL BEHAVIOR

You agree that you will be personally responsible for any use of your Account with your login and/or password and for all of the communication and activity on Steam that results from such use of your Account and of Steam, and that Valve is not responsible of the use made of your Account and of all communications and activities on Steam resulting from the use of your Account. If you believe that the confidentiality of your login and/or password may have been compromised, you must notify Valve via the support form (<https://support.steampowered.com/hdlewicket.php>) without any delay.

Your online conduct and interaction with other Subscribers should be guided by common sense and basic etiquette. Specific requirements may also be found in the Steam Online Conduct rules at [http://steampowered.com/index.php?area=online\\_conduct](http://steampowered.com/index.php?area=online_conduct), other Rules of Use, the Subscription Terms, or in terms of use imposed by third parties who host particular games or other services.

Steam and the Content and Services may include functionality designed to identify software or hardware processes or functionality that may give a player an unfair competitive advantage when playing multiplayer versions of any Content and Services or modifications of Content and Services ("Cheats"). You agree that you will not create Cheats or assist third parties in any way to create or use Cheats. You agree that you will not directly or indirectly disable, circumvent, or otherwise interfere with the operation of software designed to prevent or report the use of Cheats. You acknowledge and agree that either Valve or any online multiplayer host may refuse to allow you to participate in certain online multiplayer games if you use Cheats in connection with Steam or the Content and Services. Further, you acknowledge and agree that an online multiplayer host may report your use of Cheats to Valve, and Valve may communicate your history of use of Cheats to other online multiplayer hosts. Valve may terminate your Account or a particular Subscription for any conduct or activity that Valve believes is illegal, constitutes a Cheat, or otherwise negatively affects the enjoyment of Steam by other Subscribers. You acknowledge that Valve is not required to provide you notice before terminating your Subscription(s) and/or Account, but it may choose to do so.

You may not use Cheats, automation software (bots), mods, hacks, or any other unauthorized third-party software, to modify or automate any Subscription Marketplace process.

### 5. THIRD PARTY CONTENT

In regard to all Subscriptions, Contents and Services that are not authored by Valve, Valve does not screen such third party content available on Steam or through other sources. Valve assumes no responsibility or liability for such third party content. Some third party application software is capable of being used by businesses for business purposes - however, you may only acquire such software via Steam for private personal use.

### 6. USER GENERATED CONTENT

#### A. General Provisions

"User Generated Content" means any content you make available to other users through your use of multi-user features of Steam, or to Valve or its affiliates through your use of the Content and Services or otherwise.

You grant Valve and its affiliates the worldwide, non-exclusive, right to use, reproduce, modify, create derivative works from, distribute, transmit, transcode, translate, broadcast, and otherwise communicate, and publicly display and publicly perform, your User Generated Content, and derivative works of your User Generated Content, in connection with the operation and promotion of the Steam site. This license is granted to Valve for the entire duration of the intellectual property rights and may be terminated if Valve is in breach of the license and has not cured such breach within fourteen (14) days from receiving notice from you sent to the attention of the Valve Legal Department at the applicable Valve address noted on this [Privacy Policy](#) page. The termination of said license does not affect the rights of any sub-licensees pursuant to any sub-license granted by Valve prior to termination of the license. Valve is the sole owner of the derivative works created by Valve from your Content, and is therefore entitled to grant licenses on these derivative works. If you use Valve cloud storage, you grant us a license to store your information as part of that service. Valve may place limits on the amount of storage you may use.

If you provide Valve with any feedback or suggestions about Steam, the Content and Services, or any Valve products or services, Valve is free to use the feedback or suggestions however it chooses, without any obligation to account to you.

#### B. Content Uploaded to the Steam Workshop

Some games or applications available on Steam ("Workshop-Enabled Apps") allow you to create User Generated Content based on or using the Workshop-Enabled App, and to submit that User Generated Content (a "Workshop Contribution") to one or more Steam Workshop web pages. Workshop Contributions can be viewed by the Steam community, and for some categories of Workshop Contributions users may be able to interact with, download or purchase the Workshop Contribution. In some cases, Workshop Contributions may be considered for incorporation by Valve or a third-party developer into a game or into a Subscription Marketplace.

You understand and agree that: Valve is not obligated to use, distribute, or continue to distribute copies of any Workshop Contribution and reserves the right, but not the obligation, to restrict or remove Workshop Contributions for any reason.

Specific Workshop-Enabled Apps or Workshop web pages may contain special terms ("App-Specific Terms") that supplement or change the terms set out in this Section. In particular, where Workshop Contributions are distributed for a fee, App-Specific Terms will address how revenue may be shared. Unless otherwise specified in App-Specific Terms (if any), the following general rules apply to Workshop Contributions:

- Workshop Contributions are Subscriptions, and therefore you agree that any Subscriber receiving distribution of your Workshop Contribution will have the same rights to use your Workshop Contribution (and will be subject to the same restrictions) as are set out in this Agreement for any other Subscriptions.
- Notwithstanding the license described in Section 6.A., Valve will only have the right to modify or create derivative works from your Workshop Contribution in the following cases: (a) Valve may make modifications necessary to make your Contribution compatible

with Steam and the Workshop functionality or user interface, and (b) Valve or the applicable developer may make modifications to Workshop Contributions that are accepted for in-Application distribution as it deems necessary or desirable to enhance gameplay.

- You may, in your sole discretion, choose to remove a Workshop Contribution from the applicable Workshop pages. If you do so, Valve will no longer have the right to use, distribute, transmit, communicate, publicly display or publicly perform the Workshop Contribution, except that (a) Valve may continue to exercise these rights for any Workshop Contribution that is accepted for distribution in-game or distributed in a manner that allows it to be used in-game, and (b) your removal will not affect the rights of any Subscriber who has already obtained access to a copy of the Workshop Contribution.

Except where otherwise provided in App-Specific Terms, you agree that Valve's consideration of your Workshop Contribution is your full compensation, and you are not entitled to any other rights or compensation in connection with the rights granted to Valve and to other Subscribers.

#### C. Promotions and Endorsements

If you use Steam services (e.g. the Steam Curators' Lists or the Steam Broadcasting service) to promote or endorse a product, service or event in return for any kind of consideration from a third party (including non-monetary rewards such as free games), you must clearly indicate the source of such consideration to your audience.

#### D. Representations and Warranties

You represent and warrant to us that you have sufficient rights in all User Generated Content to grant Valve and other affected parties the license(s) described under A, and B above or in any license terms specific to the applicable Workshop-Enabled App or Workshop page. This includes, without limitation, any kind of intellectual property rights or other proprietary or personal rights affected by or included in the User Generated Content. In particular, with respect to Workshop Contributions, you represent and warrant that the Workshop Contribution was originally created by you (or, with respect to a Workshop Contribution to which others contributed besides you, by you and the other contributors, and in such case that you have the right to submit such Workshop Contribution on behalf of those other contributors).

You furthermore represent and warrant that the User Generated Content, your submission of that Content, and your granting of rights in that Content does not violate any applicable contract, law or regulation.

### 7. DISCLAIMERS; LIMITATION OF LIABILITY; NO GUARANTEES; LIMITED WARRANTY

Prior to acquiring a Subscription, you should consult the product information made available on Steam, including Subscription description, minimum technical requirements, and user reviews.

THIS SECTION DOES NOT REDUCE YOUR MANDATORY CONSUMER RIGHTS UNDER THE LAWS OF YOUR LOCAL JURISDICTION. IN PARTICULAR, SECTIONS 7.A, B, AND C DO NOT APPLY TO EU SUBSCRIBERS.

- FOR NEW ZEALAND SUBSCRIBERS, THIS SECTION 7 DOES NOT EXCLUDE, RESTRICT OR MODIFY THE APPLICATION OF ANY RIGHT OR REMEDY THAT CANNOT BE SO EXCLUDED, RESTRICTED OR MODIFIED INCLUDING THOSE CONFERRED BY THE NEW ZEALAND CONSUMER GUARANTEES ACT 1993. UNDER THIS ACT ARE GUARANTEES WHICH INCLUDE THAT GOODS AND SERVICES ARE OF ACCEPTABLE QUALITY. IF THIS GUARANTEE IS NOT MET THERE ARE ENTITLEMENTS TO HAVE THE SOFTWARE REMEDIED (WHICH MAY INCLUDE REPAIR, REPLACEMENT OR REFUND); IF A REMEDY CANNOT BE PROVIDED OR THE FAILURE IS OF A SUBSTANTIAL CHARACTER, THE ACT PROVIDES FOR A REFUND.

#### A. DISCLAIMERS

VALVE, VALVE EU AND THEIR AFFILIATES AND SERVICE PROVIDERS EXPRESSLY DISCLAIM (I) ANY WARRANTY FOR STEAM, THE CONTENT AND SERVICES, AND THE SUBSCRIPTIONS, AND (II) ANY COMMON LAW DUTIES WITH REGARD TO STEAM, THE CONTENT AND SERVICES, AND THE SUBSCRIPTIONS, INCLUDING DUTIES OF LACK OF NEGLIGENCE AND LACK OF WORKMANLIKE EFFORT. STEAM, THE CONTENT AND SERVICES, THE SUBSCRIPTIONS, AND ANY INFORMATION AVAILABLE IN CONNECTION THEREWITH ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. ANY WARRANTY AGAINST INFRINGEMENT THAT MAY BE PROVIDED IN SECTION 2-312 OF THE UNITED STATES UNIFORM COMMERCIAL CODE AND/OR IN ANY OTHER COMPARABLE STATE STATUTE IS EXPRESSLY DISCLAIMED. ALSO, THERE IS NO WARRANTY OF TITLE, NON-INFRINGEMENT WITH YOUR ENJOYMENT, OR AUTHORITY IN CONNECTION WITH STEAM, THE CONTENT AND SERVICES, THE SUBSCRIPTIONS, OR INFORMATION AVAILABLE IN CONNECTION THEREWITH.

ANY WARRANTY AGAINST INFRINGEMENT THAT MAY BE PROVIDED IN SECTION 2-312 OF THE UNITED STATES UNIFORM COMMERCIAL CODE IS EXPRESSLY DISCLAIMED.

#### B. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER VALVE, VALVE EU, THEIR LICENSORS, NOR THEIR AFFILIATES, NOR ANY OF VALVE'S OR VALVE EU'S SERVICE PROVIDERS, SHALL BE LIABLE IN ANY WAY FOR LOSS OR DAMAGE OF ANY KIND RESULTING FROM THE USE OR INABILITY TO USE STEAM, YOUR ACCOUNT, YOUR SUBSCRIPTIONS AND THE CONTENT AND SERVICES INCLUDING, BUT NOT LIMITED TO, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. IN NO EVENT WILL VALVE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR ANY OTHER DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH STEAM, THE CONTENT AND SERVICES, THE SUBSCRIPTIONS, AND ANY INFORMATION AVAILABLE IN CONNECTION THEREWITH, OR THE DELAY OR INABILITY TO USE THE CONTENT AND SERVICES, SUBSCRIPTIONS OR ANY INFORMATION, EVEN IN THE EVENT OF VALVE'S, VALVE EU'S OR THEIR AFFILIATES' FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR BREACH OF VALVE'S OR VALVE EU'S WARRANTY AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS AND LIABILITY EXCLUSIONS APPLY EVEN IF ANY REMEDY FAILS TO PROVIDE ADEQUATE RECOMPENSE.

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#### C. NO GUARANTEES

NEITHER VALVE, VALVE EU NOR THEIR AFFILIATES GUARANTEE CONTINUOUS, ERROR-FREE, VIRUS-FREE OR SECURE OPERATION AND ACCESS TO STEAM, THE CONTENT AND SERVICES, YOUR ACCOUNT AND/OR YOUR SUBSCRIPTION(S); OR ANY INFORMATION AVAILABLE IN CONNECTION THEREWITH.

#### D. LIMITED WARRANTY

CERTAIN HARDWARE PURCHASED FROM VALVE, OR VALVE EU, IS SUBJECT TO A LIMITED WARRANTY, (OR DEPENDING ON YOUR LOCATION, A STATUTORY WARRANTY) WHICH IS DESCRIBED IN DETAIL [HERE](#).

#### E. AMENDMENTS TO THIS AGREEMENT

PLEASE NOTE: If you are a consumer with place of residence in Germany, a different version of Section E applies to you, which is available [here](#).

This Agreement may at any time be mutually amended by your explicit consent to changes proposed by Valve. Furthermore, Valve, or if applicable, Valve EU, may amend this Agreement (including any Subscription Terms or Rules of Use) unilaterally at any time in its sole discretion. In this case, you will be notified by e-mail of any amendment to this Agreement made by Valve, or if applicable, Valve EU, within 60 (sixty) days before the entry into force of the said amendment. You can view the Agreement at any time at <http://www.steampowered.com>. Your failure to cancel your Account within thirty (30) days after the entry into force of the amendments will constitute your acceptance of the amended terms. If you don't agree to the amendments or to any of the terms in this Agreement, your only remedy is to cancel your Account or to cease use of the affected Subscription(s). Valve shall not have any obligation to refund any fees that may have accrued to your Account before cancellation of your Account or cessation of use of any Subscription, nor shall Valve have any obligation to prorate any fees in such circumstances.

#### F. TERM AND TERMINATION

##### A. Term

The term of this Agreement (the "Term") commences on the date you first indicate your acceptance of these terms, and will continue in effect until otherwise terminated in accordance with this Agreement.

##### B. Termination by You

You may cancel your Account at any time. You may cease use of a Subscription at any time or, if you choose, you may request that Valve terminate your access to a Subscription. However, Subscriptions are not transferable, and even if your access to a Subscription for a particular game or application is terminated, the original activation key will not be able to be registered to any other account, even if the Subscription was obtained in a retail store. Access to Subscriptions purchased as a part of a pack or bundle cannot be terminated individually; termination of access to one game within the bundle will result in termination of access to all games purchased in the pack. Your cancellation of an Account, or your cessation of use of any Subscription or request that access to a Subscription be terminated will not entitle you to any refund, including of any Subscription fees. Valve reserves the right to collect fees, surcharges or costs incurred prior to the cancellation of your Account or termination of your access to a particular Subscription. In addition, you are responsible for any charges incurred to third-party vendors or content providers before your cancellation.

##### C. Termination by Valve

Valve may cancel your Account or any particular Subscription(s) at any time in the event that (a) Valve ceases providing such Subscriptions to similarly situated Subscribers generally, or (b) you breach any terms of this Agreement (including any Subscription Terms or Rules of Use). In the event that your Account or a particular Subscription is terminated or cancelled by Valve for a violation of this Agreement or improper or illegal activity, no refund, including of any Subscription fees or of any unused funds in your Steam Wallet, will be granted.

##### D. Survival of Terms

Sections 2(C), 2(D), 2(F), 2(G), 3(A), 3(B), 3(D), 3(H), and 5 - 12 will survive any expiration or termination of this Agreement.

#### 10. APPLICABLE LAW/JURISDICTION

For All Customers Outside the European Union:

You agree that this Agreement shall be deemed to have been made and executed in the State of Washington, U.S.A., and any dispute arising hereunder shall be resolved in accordance with the law of Washington excluding the law of conflicts and the Convention on Contracts for the International Sale of Goods. Subject to Section 11 (Dispute Resolution/Binding Arbitration/Class Action Waiver) below, you agree that any claim asserted in any legal proceeding by you against Valve shall be commenced and maintained exclusively in any state or federal court located in King County, Washington, having subject matter jurisdiction with respect to the dispute between the parties and you hereby consent to the exclusive jurisdiction of such courts. In any dispute arising under this Agreement, the prevailing party will be entitled to attorneys' fees and expenses.

For EU Customers:

You agree that this Agreement shall be deemed to have been made and executed in the Grand Duchy of Luxembourg and that it is subject to the laws of Luxembourg, excluding the law of conflicts and the Convention on Contracts for the International Sale of Goods (CISG). However, where the laws of Luxembourg provide a lower degree of consumer protection than the laws of your country of residence, the consumer protection laws of your country shall prevail. In any dispute arising under this Agreement, the prevailing party will be entitled to attorneys' fees and expenses.

#### 11. DISPUTE RESOLUTION/BINDING ARBITRATION/CLASS ACTION WAIVER

This Section 11 shall apply to the maximum extent permitted by applicable law. If the laws of your jurisdiction prohibit the application of some or all of the provisions of this Section notwithstanding Section 10 (Applicable Law/Jurisdiction), such provisions will not apply to you. IN PARTICULAR, IF YOU ARE AN EU SUBSCRIBER, THIS SECTION 11 DOES NOT APPLY TO YOU.

Most user concerns can be resolved by use of our Steam support site at <http://support.steampowered.com>. If Valve is unable to resolve your concerns and a dispute remains between you and Valve, this Section explains how the parties have agreed to resolve it.

YOU AND VALVE AGREE TO RESOLVE ALL DISPUTES AND CLAIMS BETWEEN US IN INDIVIDUAL BINDING ARBITRATION THAT INCLUDES, BUT IS NOT LIMITED TO, ANY CLAIMS ARISING OUT OF OR RELATING TO: (i) ANY ASPECT OF THE RELATIONSHIP BETWEEN US; (ii) THIS AGREEMENT; OR (iii) YOUR USE OF STEAM, YOUR ACCOUNT OR THE CONTENT AND SERVICES. IT APPLIES REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED IN CONTRACT, TORT, STATUTE, FRAUD, UNFAIR COMPETITION, MISREPRESENTATION OR ANY OTHER LEGAL THEORY.

However, this Section does not apply to the following types of claims or disputes, which you or Valve may bring in any court with jurisdiction: (i) claims of infringement or other misuse of intellectual property rights, including such claims seeking injunctive relief; and (ii) claims related to or arising from any alleged unauthorized use, piracy or theft.

This Section does not prevent you from bringing your dispute to the attention of any federal, state, or local government agencies that can, if the law allows, seek relief from us for you.

An arbitration is a proceeding before a neutral arbitrator, instead of before a judge or jury. Arbitration is less formal than a lawsuit in court, and provides more limited discovery. It follows different rules than court proceedings, and is subject to very limited review by courts. The arbitrator will issue a written decision and provide a statement of reasons if requested by either party. **YOU UNDERSTAND THAT YOU AND VALVE ARE GIVING UP THE RIGHT TO SUE IN COURT AND TO HAVE A TRIAL BEFORE A JUDGE OR JURY**

You and Valve agree to make reasonable, good faith efforts to informally resolve any dispute before initiating arbitration. A party who intends to seek arbitration must first send the other a written notice that describes the nature and basis of the claim or dispute and sets forth the relief sought. If you and Valve do not reach an agreement to resolve that claim or dispute within 30 days after the notice is received, you or Valve may commence an arbitration. Written notice to Valve must be sent via postal mail to: ATTN: Arbitrator Notice, Valve Corporation, P.O. Box 1688, Bellevue, WA 98004.

The Federal Arbitration Act applies to this Section. The arbitration will be governed by the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and, where applicable, the AAA's Supplementary Procedures for Consumer-Related Disputes, as modified by this Agreement, both of which are available at <http://www.adr.org>. The arbitrator is bound by the terms of this Agreement.

The AAA will administer the arbitration. It may be conducted through the submission of documents, by phone, or in person in the county where you live or at another mutually agreed location.

If you seek \$10,000 or less, Valve agrees to reimburse your filing fee and your share of the arbitration costs, including your share of arbitrator compensation, at the conclusion of the proceeding, unless the arbitrator determines your claims are frivolous or costs are unreasonable as determined by the arbitrator. Valve agrees not to seek its attorneys' fees or costs in arbitration unless the arbitrator determines your claims are frivolous or costs are unreasonable as determined by the arbitrator. If you seek more than \$10,000, the arbitration costs, including arbitrator compensation, will be split between you and Valve according to the AAA Commercial Arbitration Rules and the AAA's Supplementary Procedures for Consumer-Related Disputes, if applicable.

**YOU AND VALVE AGREE NOT TO BRING OR PARTICIPATE IN A CLASS OR REPRESENTATIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR COLLECTIVE ARBITRATION, EVEN IF AAA'S PROCEDURES OR RULES WOULD OTHERWISE ALLOW. ONE THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT OF THAT PARTY'S INDIVIDUAL CLAIM.** You and Valve also agree not to seek to combine any action or arbitration with any other action or arbitration without the consent of all parties to this Agreement and all other actions or arbitrations.

If the agreement in this Section not to bring or participate in a class or representative action, private attorney general action or collective arbitration should be found illegal or unenforceable, you and Valve agree that it shall not be severable, that this entire Section shall be unenforceable and any claim or dispute would be resolved in court and not in collective arbitration.

Notwithstanding this Section, you have the right to litigate any dispute in small claims court, if all the requirements of the small claims court, including any limitations on jurisdiction and the amount at issue in the dispute, are satisfied.

## 12. MISCELLANEOUS

Except as otherwise expressly set forth in this Agreement, in the event that any provision of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force and effect. This Agreement, including any Subscription Terms, Rules of Use, the Valve Privacy Policy, and the Valve Hardware Warranty Policy constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements. You agree that this Agreement is not intended to confer and does not confer any rights or remedies upon any person other than the parties to this Agreement.

Valve's and, as applicable, Valve EU's, obligations are subject to existing laws and legal process and Valve and, as applicable, Valve EU's, may comply with law enforcement or regulatory requests or requirements notwithstanding any contrary term.

You agree to comply with all applicable import/export laws and regulations. You agree not to export the Content and Services or Hardware or allow use of your Account by individuals or any terrorist supporting countries to which encryption exports are at the time of exportation restricted by the U.S. Bureau of Export Administration. You represent and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country.

This Agreement was last updated on January 1st, 2016 ("Revision Date"). If you were a Subscriber before the Revision Date, it replaces your existing agreement with Valve or Valve EU on the day that you explicitly accept it. If you prefer to continue using Steam and your existing Subscriptions under the version of the Agreement in effect prior to the Revision Date, you are free to do so.

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# **Exhibit 5**



## Rules of Conduct

Last modified on 11/20/2015

At Twitch, our mission is to provide the best social video platform created by the community where broadcasters and viewers can interact in real time. To achieve this goal, we ask that all users participate in such a way that promotes a safe and positive experience for our global audience.

To protect the integrity of our community, as the provider of the service, we at Twitch reserve the right to suspend any account at any time for any conduct that we determine to be inappropriate or harmful. You are free to appeal your suspension, but we are not required to provide a reason for our decision.

For minor first and second suspensions, your access to the site will be restricted for 24 hours, but there is no fixed time for the length of subsequent suspensions or suspensions for severe violations. We will consider appeals to indefinite suspensions based on our review of your conduct, account standing, and any other information we have. Our Customer Support & Moderation team reviews all requests for reinstatement, and we process these along with all other support requests.

In addition to our Terms of Service, we provide the following list of behaviors that could lead to suspension of your account or channel. These behaviors fall under a common sense philosophy and apply to all video content, audio content, chat messages, channel content, profile content, usernames, and any other conduct on our services. This is considered a living document that we will regularly update based on the evolution of the Twitch community and platform.

### General Conduct

If you find yourself asking whether or not you're crossing the line, chances are you shouldn't do it.

### Breaking the Law

You must respect all applicable local, national, and international laws while using our services. Any content or activity featuring or encouraging illegal activity is prohibited.

### Suspension Evasion

All suspensions are binding until expiration or removal upon appeal. Any attempt to circumvent a site-wide or chat suspension by using other accounts, identities, personalities, or presence on another user's account will also result in suspension. Suspension evasion will not only increase the length of suspension, but may lead to an indefinite suspension.

### Self-Destructive Behavior

Any activity that may endanger your life or lead to your physical harm is prohibited. This includes, but is not limited to: suicide threats, intentional physical trauma, use of illegal drugs, or drinking excessively.

### Targeted Harassment, Threats, and Violence Against Others

Harassment, defamation, intimidation, raiding with malicious intent, or stalking of other persons or users, including Twitch Staff, Admins, or Global Moderators, is strictly prohibited.

The following are considered zero-tolerance harassment violations, and all accounts associated with such activity will receive an immediate indefinite suspension:

Attempting or threatening to harm or kill another person

Attempting or threatening to DDOS or SWAT another person

Posting someone else's personal information, such as a real name or location, without consent

**Hate Speech and Other Harassment**

Any content that promotes or encourages discrimination, harassment, or violence based on race, ethnicity, gender identity, sexual orientation, age, religion, or nationality is prohibited.

**Impersonation**

Content or activity meant to impersonate an individual or organization is prohibited. Any attempt to misrepresent yourself as a member of Twitch Staff, Admins, or Global Moderators is a zero-tolerance violation and will result in immediate indefinite suspension.

**Spam, Scams, and Other Malicious Conduct**

Any content or activity that disrupts, interrupts, harms, or otherwise violates the integrity of Twitch services or another user's experience or devices is prohibited. Such activity includes:

Posting large amounts of repetitive, unwanted messages or user reports

Distributing unauthorized advertisements

Phishing

Defrauding others

Spreading malware or viruses

Misinformation (such as feigning distress, posting misleading metadata, or intentional channel misclassification)

Tampering (such as artificially inflating follow or live viewer stats)

Reselling Twitch services or features (such as channel moderation status)

**Pornography and Other Sexually Explicit Conduct**

Any content or activity involving pornography, sexual intercourse, or adult services is prohibited. Conduct involving exploitation of minors will be reported to authorities via the National Center for Missing & Exploited Children.

**Inappropriate Broadcaster Behavior and Attire**

Nudity and conduct involving overtly sexual behavior and/or attire are prohibited.

**Gore and Other Obscene Conduct**

Content that exclusively focuses on extreme or gratuitous gore and violence is prohibited.

**Unauthorized Rebroadcasts & Other Copyright Violations**

Uploading any content that you do not own, do not have the rights to, or are otherwise not authorized to use may make your account liable to DMCA takedown by a rights holder. This includes, but is not limited to: rebroadcasting other Twitch broadcasters, playing pirated games, playing on unauthorized private servers, and uploading content from other sites.

**Gaming Conduct****Cheating in Online Games**

Any activity, such as cheating, hacking, botting, or tampering, that gives the account owner an unfair advantage in an online multiplayer game, is prohibited. This also includes exploiting another broadcaster's live broadcast in order to harass them in-game, such as stream sniping.

**Broadcasting Sexually Explicit, Adults-Only, or Other Prohibited Games**

Nudity can't be a core focus or feature of the game in question, and modded nudity is disallowed in its entirety. Occurrences of in-game nudity are permitted, so long as you do not make them a primary focus of your broadcast and only spend as much time as needed in the area to progress the game's story.

Games rated Adults Only (AO) by the ESRB are not permitted for broadcast on Twitch. For a complete list of games that are explicitly prohibited, please refer to our List of Prohibited Games.

**Broadcasting Closed Alphas/Betas or Full Games Before Official Release Date**

We ask that you respect all publisher/developer-enforced release dates, embargos, and NDAs by waiting to broadcast these games until everyone else gets to. Unless given prior approval, your channel may be subject to DMCA takedown by a rights holder.

Rights holders should report violations in accordance with our DMCA Guidelines. We ask that users refrain from reporting possible violations via the user report tool.

**Creative Conduct**

The primary focus of a Twitch Creative broadcast should be the process of creating an entirely original work or original content that could be copyright-protected. Broadcasts that involve replicas or derivative creations of others' copyrighted content may be subject to DMCA takedown by a rights holder. We encourage you to assess your broadcasts for adherence to copyright laws, including fair use.

**Performances**

Performances are permitted only to the extent that they contribute to the creation of an original work. However, broadcasts that focus entirely on performances of preexisting material are not permitted.

If you wish to perform or sing your own original music on your broadcast, please set your channel to the Music category, rather than the Creative category.

**Assembly, Maintenance, or Reproduction**

Any activity considered to be assembly, reassembly, maintenance, or reproduction of preexisting works is permitted only to the extent that it contributes to the creation of an original work.

**Depictions of Nudity or Extreme Violence**

We ask that you refrain from creating or using depictions of nudity or extreme violence for the time being. We are currently working on site features that will allow for responsible broadcasting and viewing of legitimate artistic depictions of nudity and violence.

**D.I.Y. & Other Permitted Content**

In addition to content that adheres to our Creative Rules of Conduct, we have determined the following type of do-it-yourself activities are also appropriate to broadcast in Creative:

Cooking your own recipes

Building custom PCs

Assembling your Twitch broadcast setup

Furniture hacks/customization

Model making

For a more comprehensive list of permitted Creative content, please read our Creative FAQ.

**Music Conduct**

Twitch Music broadcasts should focus on the live creation or performance of original music and should not only be an original audio experience, but a visual one too. Whether you're singing, playing an instrument, or composing music, we must be able to hear you and your music and see you or your instruments/tools.

**Recorded Music**

Radio-style broadcasts featuring recorded music with no visual component other than static imagery or music visualizations are reserved only for approved music labels. Music performances such as karaoke, dancing to someone else's music, covering someone else's music, and lip-syncing/impersonating cannot be the focus of your Music broadcasts.

**Content Appropriate for Multiple Categories**

Broadcasters are welcome to categorize their channels in any category appropriate for the content of their broadcast. For example, if you are creating game-specific art, you are free to categorize yourself in the associated game directory or Creative category. Similarly, if you are composing music, you are free to categorize yourself in Music or Creative.

**Non-Endemic Content**

All content that is neither gaming-related nor permitted in our Creative or Music categories is prohibited from broadcast.

**Language**

About  
Blog  
Turbo  
Music

Advertisers  
Developers  
Partners  
Mobile  
Jobs  
Help  
Terms  
[Privacy Policy](#)  
[Ad Choices](#)  
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# **Exhibit 6**

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## Terms of Service

Last modified on 1/15/2015

### 1. Introduction; Your Agreement to these Terms of Service.

PLEASE READ THESE TERMS OF SERVICE CAREFULLY, INCLUDING THE MANDATORY ARBITRATION PROVISION WHICH (IF YOU ARE RESIDENT IN THE USA OR ELSEWHERE IN THE WORLD, BUT NOT IF YOU ARE A CONSUMER IN THE EUROPEAN UNION) REQUIRES THAT DISPUTES ARE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL AND NOT A CLASS-WIDE OR CONSOLIDATED BASIS.

Welcome to the game video management and streaming platform operated by Twitch Interactive, Inc. ("Twitch") consisting of the web site available at the URL <http://www.twitch.tv> and all related services, software applications and networks that allow for the authorized streaming and distribution of game video content over the internet (the "Twitch Service"). The Twitch Service also includes any other sites or services that link to these terms of service (the "Terms of Service"). Other services offered by Twitch may be subject to separate terms (in which case we will let you know what terms will apply to those services).

The following Terms of Service for the Twitch Service is a legal contract between you, an individual user of at least 13 years of age (see section 2 below about minors using Twitch) or a single entity ("you"), and Twitch regarding your use of the Twitch Service.

Twitch may offer certain additional services for which you can agree to pay fees to Twitch. The applicable terms will be made available on the applicable Twitch web page and will supplement these Terms of Service. If you register and/or use any such paid fee services, you will be asked to agree to and comply with the Twitch Terms of Sale. The Twitch Terms of Sale is hereby incorporated by reference (this means legally that they form a part of these Terms of Service).

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY REGISTERING FOR, ACCESSING, BROWSING, DOWNLOADING FROM OR USING THE TWITCH SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE. IF AT ANY TIME YOU DO NOT AGREE TO THESE TERMS OF SERVICE, PLEASE IMMEDIATELY TERMINATE YOUR USE OF THE TWITCH SERVICE OR, IF YOU ARE A CONSUMER RESIDENT IN THE EUROPEAN UNION, CONTACT US AT [LEGAL@TWITCH.TV](mailto:LEGAL@TWITCH.TV) TO DISCUSS ANY CONCERNs YOU MAY HAVE REGARDING THESE TERMS OF SERVICE.**

IF YOU ARE USING OR OPENING AN ACCOUNT WITH TWITCH ON BEHALF OF A COMPANY, ENTITY, OR ORGANIZATION (COLLECTIVELY, A "SUBSCRIBING ORGANIZATION") THEN YOU REPRESENT AND WARRANT THAT YOU: (I) ARE AN AUTHORIZED REPRESENTATIVE OF THAT SUBSCRIBING ORGANIZATION WITH THE AUTHORITY TO BIND SUCH ORGANIZATION TO THESE TERMS OF SERVICE; (II) HAVE READ THE FOREGOING TERMS, (III) UNDERSTAND THESE TERMS OF SERVICE, AND (IV) AGREE TO THESE TERMS OF SERVICE ON BEHALF OF SUCH SUBSCRIBING ORGANIZATION.

## 2. Use of Twitch by Minors and Blocked Persons.

The Twitch Service is not available to persons under the age of 13. If you are between the ages of 13 and 18 (or between 13 and the age of legal majority in your country of residence), you may only use the Twitch Service under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Service. BY DOWNLOADING, INSTALLING OR OTHERWISE USING THE TWITCH SERVICE, YOU REPRESENT THAT YOU ARE AT LEAST 13 YEARS OF AGE AND HAVE NOT BEEN PREVIOUSLY SUSPENDED OR REMOVED FROM THE TWITCH SERVICE.

The Twitch Service is also not available to any users previously suspended or removed from the Twitch Service by Twitch (see section 16 below for more about suspension or removal).

## 3. Privacy Policy.

Your privacy is important to Twitch. Please see our Privacy Policy for information relating to how we collect, use, and disclose your personal information.

## 4. License

The Twitch Service is owned and operated by Twitch. Unless otherwise indicated, all Content and other materials on the Twitch Services, including, without limitation, Twitch's logos, the visual interfaces, graphics, design, compilation, information, software, computer code (including source code or object code), services, text, pictures, information, data, sound files, other files and the selection and arrangement thereof (collectively, the "Materials") are protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws (including in your country of residence). All Materials contained on the Twitch Service are the proprietary property of Twitch or its subsidiaries or affiliated companies and/or third-party licensors. All trademarks, service marks, and trade names are proprietary to Twitch or its affiliates and/or third-party licensors. Twitch reserves all rights not expressly granted in these Terms of Service.

Unless otherwise expressly stated in writing by Twitch, you are granted a limited, non-sublicensable license (i.e. a personal and limited right) to access and use the Twitch Service for your personal or internal business use only.

This license is subject to these Terms of Service and does not include any of the following: (a) any resale or commercial use of the Twitch Service or the Materials; (b) the distribution, public performance or public display of any Materials (except for Broadcaster Content by the Broadcaster posting the Broadcaster Content – this is all explained further below); (c) modifying or otherwise making any derivative uses of the Twitch Service or the Materials, or any portion of them; (d) use of any data mining, robots or similar data gathering or extraction methods; (e) downloading (except page caching) of any portion of the Twitch Service, the Materials or any information contained in them, except as expressly permitted on the Twitch Service; or (f) any use of the Twitch Service or the Materials except for their intended purposes. Any use of the Twitch Service or the Materials except as specifically authorized in these Terms of Service, without the prior written permission of Twitch, is strictly prohibited and your failure to comply with them may have legal consequences which may include violating applicable laws, including copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated in these Terms of Service, nothing in them shall be interpreted as conferring any license to intellectual property rights, whether by estoppel, implication or other legal principles. This license can be terminated (see further section 16).

## 5. Individual Features and Services.

When using the Twitch Service, you will be subject to any additional posted guidelines or rules applicable to specific services and features which may be posted online and notified to you from time to time (the " Guidelines "). All these Guidelines are hereby incorporated by reference into these Terms of Service (i.e. they are made part of these Terms of Service).

## 6. Modification of these Terms of Service.

Twitch reserves the right, at our discretion, to change, modify, add, or remove portions of these Terms of Service at any time (for example to reflect updates to the Twitch Service or to reflect changes in the law). If Twitch changes these Terms of Service, we will provide you notice of these changes, such as by sending an email, posting a notice on the Twitch Service or updating the "Last Updated" date above. Please check these Terms of Service and any Guidelines periodically for those changes. Your continued use of the Twitch Service after the posting of changes constitutes your binding acceptance of such changes. For any material changes to these Terms of Service, the amended terms will automatically be effective thirty days after they are initially posted on the Twitch Service unless you contact us to discuss any questions or comments during that time period. We will always make a reasonable effort to notify you if we do change these Terms of Service.

## 7. Digital Millennium Copyright Act.

Please note that since we respect game designer, game publisher, music, and other Content (as defined below) owner rights, it is Twitch's policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act (the " DMCA "). If you believe that anything in the Twitch Services infringes upon any copyright that you own or control, you may file a notification of such infringement with our Designated Agent as set forth below.

Name of Designated Agent: Elizabeth Baker - General Counsel

Address of Designated Agent: 225 Bush Street, 9th Floor, San Francisco, CA 94104 E-mail Address of Designated Agent: dmca@twitch.tv

Please see 17 U.S.C. §512(c)(3) for the requirements of a proper notification. You should note that if you knowingly misrepresent in your notification that the material or activity is infringing, you will be liable for any damages, including costs and attorneys' fees, incurred by us or the alleged infringer as the result of our relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing.

## 8. Other Intellectual Property Rights Infringement Systems in the EU and Rest of the World.

If you believe that your copyright or other intellectual property rights have been infringed and they are not subject to US law and jurisdiction (for example, if you consider the infringement is subject to the E-Commerce Directive of the European Union), then we invite you to contact us using the procedure set out at section 7) for the US Digital Millennium Copyright Act to the extent relevant. You can contact dmca@twitch.tv if you wish to discuss this further with us.

## 9. Repeat Infringer Policy.

In accordance with the DMCA and other applicable laws around the world, Twitch has adopted a policy that it will promptly terminate without notice any user's access to the Twitch Service if that user is determined by Twitch to be a "repeat infringer." A repeat infringer includes, without limitation a user who has been notified by Twitch of infringing activity violations more than twice and/or who has had their Broadcaster Content or any other user-submitted content removed from the Twitch Service more than twice. Twitch may also at our sole discretion limit access to the Twitch Service and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

In addition, Twitch accommodates and does not interfere with standard technical measures used by intellectual property rights owners to protect their materials.

## 10. Trademarks.

TWITCH, TwitchTV, the Twitch logos and any other product or service name or slogan contained in the Twitch Service are trademarks of Twitch or our suppliers or licensors and may not be copied, imitated or used, in whole or in part, without the prior written permission of Twitch or the applicable trademark holder. Any authorized use of these trademarks must be in accordance with any guidelines that Twitch may provide you from time to time.

You may not use any metatags or any other hidden text utilizing "Twitch" or any other name, trademark or product or service name of Twitch without our prior written permission. In addition, the look and feel of the Twitch Service, including all page headers, custom graphics, button icons and scripts, is the service mark, trademark and/or trade dress of Twitch and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned in the Twitch Service are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof by us or any other affiliation.

## 11. Broadcasters.

Twitch allows certain users ("Broadcaster") to distribute streaming live and pre-recorded videos or video game related activities

### a. License from Twitch.

If you sign up for an account as a Broadcaster, subject to your compliance with these Terms of Service, Twitch hereby grants to you a personal, limited, non-exclusive, non-transferable, freely revocable license to use the Twitch Service for the uploading and distributing of authorized digital content, including videos ("Broadcaster Content").

### b. License to Twitch

Unless otherwise agreed to in a written agreement between you and Twitch that was signed by an authorized representative of Twitch:

- i. By distributing or disseminating Broadcaster Content through the Twitch Service, you hereby grant to Twitch a worldwide, nonexclusive, royalty-free, perpetual, transferable and fully sublicensable right to use, host, convert for streaming, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, display and otherwise exploit your Broadcaster Content, in any form, format, media or media channels now known or later developed or discovered. You grant Twitch and our sublicensees the right to use the name that you submit in connection with that content, if we or they choose.
- ii. Except for Broadcaster Content already downloaded by users, the foregoing license granted by you terminates regarding a specific piece of Broadcaster Content once you remove or delete that Broadcaster Content from the Twitch Service.

### c. Broadcaster Content Representations and Warranties.

You are solely responsible for your Broadcaster Content and the consequences of posting or publishing it. By uploading and publishing your Broadcaster Content, you represent, and warrant that: (1) you are the creator and owner of the Broadcaster Content or otherwise have sufficient rights and authority to grant the rights granted herein; (2) your Broadcaster Content does not and will not (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right or (b) slander, defame, or libel any other person; (3) your Broadcaster Content does not contain any viruses, adware, spyware, worms, or other harmful or malicious code or (4) unless you have received prior written authorization, your Broadcaster Content specifically does not contain any prerelease or non-public beta software or game content or any confidential information of Twitch or third parties. Twitch reserves all rights and remedies against any Broadcasters who breach these representations and warranties.

### d. Content is Uploaded at Your Own Risk.

Twitch uses reasonable security measures in order to attempt to protect Broadcaster Content. However, Twitch cannot guarantee that there will be no unauthorized copying or distribution of Broadcaster Content nor will Twitch be liable for any copying or usage of the Broadcaster Content not authorized by Twitch. You hereby release and forever waive any claims you may have against Twitch for any such unauthorized copying or usage of the Broadcaster Content, under any theory. THE SECURITY MEASURES TO PROTECT BROADCASTER CONTENT USED BY TWITCH HEREIN ARE PROVIDED AND USED "AS-IS" AND WITH NO WARRANTIES OR ASSURANCES THAT SUCH SECURITY MEASURES WILL WITHSTAND ATTEMPTS TO EVADE SECURITY MECHANISMS OR THAT THERE WILL BE NO CRACKS, DISABLEMENTS OR OTHER CIRCUMVENTION OF SUCH SECURITY MEASURES.

### e. Prevention of Unauthorized Use of Broadcaster account.

Unless expressly permitted in writing by Twitch, you may not sell, rent, lease, share or provide access to your Broadcaster account to any third party, including without limitation charging any remuneration (e.g. money) to any third party for access to administrative rights on your Broadcaster account. Twitch reserves all available legal rights and remedies to prevent unauthorized use of the Twitch Service, including, but not limited to, technological barriers, IP mapping, and in serious cases directly contacting your Internet Service Provider (ISP) regarding such unauthorized use.

### f. Promotions

Broadcasters may promote, administer or conduct a promotion on, through or utilizing Twitch (a "Promotion"). If you are a Broadcaster and you choose to promote, administer or conduct a Promotion, you must follow the following rules:

- i. You may carry out Promotions to the extent permitted by applicable local law and you are solely responsible for ensuring that you and any Promotions comply with any and all applicable local law obligations and restrictions.
- ii. You, at your expense, will be solely responsible for all aspects of your Promotion, including, without limitation, the execution, administration, and operation of the Promotion; drafting and posting any official rules; selecting winners; issuing prizes, and obtaining all necessary third-

party permissions and approvals, including, without limitation, filing any and all necessary registrations and bonds. Twitch has the right to remove your Promotion from the Twitch Service for any reason.

- iii. Twitch is not responsible for and does not endorse or support any such Promotions. You may not indicate that Twitch is a sponsor or co-sponsor of the Promotion.

iv. ALL Broadcasters should display or read out the following when a Promotion is on their channel:

*"This is a promotion from [channel name]. Twitch does not sponsor or endorse broadcaster promotions and is not responsible for them."*

**g. Endorsements/Testimonials**

You agree that your Broadcaster Content will comply with the FTC's Guidelines Concerning the Use of Testimonials and Endorsements in Advertising (available at <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>) ("Guidelines"). For example, if you have been paid or provided with free products in exchange for discussing or promoting a product or service through the Twitch Service, or if you are an employee of a company and you decide to discuss or promote that company's products or services through the Twitch Service, you agree to comply with the Guidelines' requirements for disclosing such relationships. You, and not Twitch, are solely responsible for any endorsements or testimonials you make regarding any product or service through the Twitch Service.

## 12. Third Party Content.

In addition to the Broadcaster Content, Twitch may provide other third party content on the Twitch Services and may provide links to Web pages and content of third parties (collectively the "Third-Party Content") as a service to those interested in this information. Twitch does not control, endorse or adopt any Third-Party Content and makes no representation or warranties of any kind regarding the Third-Party Content, including without limitation regarding its accuracy or completeness. Please be aware that we do not create Third Party Content, nor we do not update or monitor it, therefore we are not responsible for any Third Party Content on the Twitch Service. Users use such Third-Party Content at their own risk.

The Twitch Service may include links or references to other web sites or services solely as a convenience to Users ("Reference Sites"). Twitch does not endorse any such Reference Sites or the information, materials, products, or services contained on or accessible through Reference Sites. In addition, your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Twitch Service are solely between you and such advertiser. Access and use of Reference Sites, including the information, materials, products, and services on or available through Reference Sites is solely at your own risk.

## 13. Prohibited Conduct.

The Twitch Services may include interactive areas or services ("Interactive Areas"), such as chat boxes or web forums, in which you or other users may create, post or store content, messages, materials, data, information, text, music, sound, photos, video, graphics, applications, code or other items or materials on the Twitch Services ("User Content" and collectively with Broadcaster Content, "Content"). You are solely responsible for your use of such Interactive Areas and use them at your own risk. BY USING THE TWITCH SERVICE, INCLUDING THE INTERACTIVE AREAS, YOU AGREE NOT TO violate any law, contract, intellectual property or other third-party right or commit a tort, and that you are solely responsible for your conduct while on the Twitch Service.

You agree that you will comply with these Terms of Service and Rules of Conduct and will not:

- a. use the Twitch Service for any purposes except to disseminate or receive original or appropriately licensed content and/or to access the Twitch Service;
- b. rent, lease, loan, sell, resell, sublicense, distribute or otherwise transfer the licenses granted in these Terms of Service or any Materials (as defined in section 4);
- c. post, upload, or distribute any defamatory, libelous, or inaccurate Content;
- d. impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the Twitch Service accounts of others without permission, forge another persons' digital signature, misrepresent the source, identity, or content of information transmitted via the Twitch Service, or perform any other similar fraudulent activity;
- e. delete the copyright or other proprietary rights notices on the Twitch Service or Content;

- f. make unsolicited offers, advertisements, proposals, or send junk mail or spam to other Users of the Twitch Service, including, without limitation, unsolicited advertising, promotional materials, or other solicitation material, bulk mailing of commercial advertising, chain mail, informational announcements, charity requests, petitions for signatures, or any of the preceding things related to promotional giveaways (such as raffles and contests), and other similar activities;
- g. harvest or collect the email addresses or other contact information of other users from the Twitch Service for the purpose of sending spam or other commercial messages;
- h. use the Twitch Service for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property and other proprietary rights, and data protection and privacy;
- i. defame, harass, abuse, threaten or defraud Users of the Twitch Service, or collect, or attempt to collect, personal information about Users or third parties without their consent;
- j. remove, circumvent, disable, damage or otherwise interfere with security-related features of the Twitch Service or Content, features that prevent or restrict use or copying of any content accessible through the Twitch Service, or features that enforce limitations on the use of the Twitch Service or Content;
- k. reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Twitch Service or any part thereof, except and only to the extent that this activity is expressly permitted by the law of your country of residence;
- l. modify, adapt, translate or create derivative works based upon the Twitch Service or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
- m. intentionally interfere with or damage operation of the Twitch Service or any user's enjoyment of them, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code;
- n. relay email from a third party's mail servers without the permission of that third party;
- o. use any robot, spider, scraper, crawler or other automated means to access the Twitch Service for any purpose or bypass any measures Twitch may use to prevent or restrict access to the Twitch Service;
- p. manipulate identifiers in order to disguise the origin of any Content transmitted through the Twitch Service;
- q. interfere with or disrupt the Twitch Service or servers or networks connected to the Twitch Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Twitch Service; use the Twitch Service in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying the Twitch Service, or that could damage, disable, overburden or impair the functioning of the Twitch Service in any manner;
- r. use or attempt to use another user's account without authorization from that user and Twitch;
- s. attempt to circumvent any content filtering techniques we employ, or attempt to access any service or area of the Twitch Service that you are not authorized to access; or
- t. attempt to indicate in any manner that you have a relationship with us or that we have endorsed you or any products or services for any purpose.

Further, BY USING THE TWITCH SERVICE, INCLUDING THE INTERACTIVE AREAS YOU AGREE NOT TO post, upload to, transmit, distribute, store, create or otherwise publish through the Twitch Service any of the following:

- a.** Content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law or regulation;
- b.** Content that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party. By posting any Content, you represent and warrant that you have the lawful right to distribute and reproduce such Content;
- c.** Content that is unlawful, libellous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or otherwise objectionable;
- d.** Content that impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity;
- e.** private information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
- f.** viruses, corrupted data or other harmful, disruptive or destructive files; and
- g.** Content that, in the judgment of Twitch, is objectionable or which restricts or inhibits any other person from using or enjoying the Interactive Areas or the Twitch Service, or which may expose Twitch or our users to any harm or liability.

Twitch takes no responsibility and assumes no liability for any Content posted, stored or uploaded by you or any third party, or for any loss or damage thereto, nor is Twitch liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter. Your use of the Twitch Service is at your own risk. Enforcement of the user content or conduct rules set forth in these Terms of Service is solely at Twitch's discretion, and failure to enforce such rules in some instances does not constitute a waiver of our right to enforce such rules in other instances. In addition, these rules do not create any private right of action on the part of any third party or any reasonable expectation that the Twitch Service will not contain any content that is prohibited by such rules. As a provider of interactive services, Twitch is not liable for any statements, representations or Content provided by our users in any public forum, personal home page or other Interactive Area. Twitch does not endorse any Content or any opinion, recommendation or advice expressed therein, and Twitch expressly disclaims any and all liability in connection with Content. Although Twitch has no obligation to screen, edit or monitor any of the Content posted in any Interactive Area, Twitch reserves the right, and has absolute discretion, to remove, screen or edit any Content posted or stored on the Twitch Service at any time and for any reason without notice, and you are solely responsible for creating backup copies of and replacing any Content you post or store on the Twitch Service at your sole cost and expense. Any use of the Interactive Areas or other portions of the Twitch Service in violation of the foregoing violates these Terms and may result in, among other things, termination or suspension of your rights to use the Interactive Areas and/or the Twitch Service.

## 14. Rights in User Content

If you submit or post User Content to the Twitch Service you grant Twitch a worldwide, nonexclusive, royalty-free, perpetual, irrevocable and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such User Content in any form, format, media or media channels now known or hereafter developed or discovered. You grant Twitch and our sublicensees the right to use the name that you submit in connection with such content, if we or they choose.

By submitting or posting User Content to the Twitch Service, you agree that: (a) such User Content is non-confidential; (b) you own and control all of the rights to the User Content that you post or you otherwise have all necessary rights to post such User Content to the Twitch Service; (c) the User Content is accurate and not misleading or harmful in any manner; and (d) the User Content, and your use and posting of that User Content in connection with the Twitch Service, does not and will not violate these Terms of Service or any applicable law, rule or regulation in your country or elsewhere.

## 15. Account

### a. Account and Password.

You may wish to open a Twitch account with us for a number of reasons, including a more personalized Twitch experience or to upload and/or download or purchase content or any products, services, or information from Twitch.

In order to open an account, you will be asked to provide us with certain information like an account name and password (all of which will be protected by our Privacy Policy).

Once you have a Twitch account you can purchase products and services (including subscriptions) via Twitch. The Twitch Terms of Sale explain how this works – please read carefully this important document, which is incorporated by reference into these Terms of Service (this means they legally form part of this document).

While Twitch uses reasonable security precautions, you are solely responsible for maintaining the confidentiality of your account and password, for restricting access to your computer and for all activities that occur under your account or password. Please make sure you provide to Twitch on registration and at all other times information which will be true, accurate, current, complete and kept up to date to the best of your ability.

If you have reason to believe that your account is no longer secure (e.g., in the event of a loss, theft or unauthorized disclosure or use of your account ID, password, or any credit, debit or charge card number, if applicable), then you must immediately notify Twitch at legal@twitch.tv.

### b. Third Party Accounts.

Twitch may permit you to register for and log onto the Twitch Service via certain third party social networks, such as by using Facebook Connect. If you log in via such social networks, the profile information connected to the account you use to log into the Twitch Service, including your name, may be used by Twitch in order to provide and support your account. You also acknowledge and agree that Twitch may publish information regarding your use of the Twitch Service to and in connection with any such third party social network with which you use the Twitch Service (unless you tell us otherwise).

## 16. Termination.

Twitch reserves the right, without notice and in our sole discretion, to terminate your license to use the Twitch Service (including to post Broadcaster Content), and to block or prevent your future access to and use of the Twitch Service. This includes Twitch having the ability to terminate or to suspend your access to any purchased products or services, including any subscriptions or Turbo accounts. Your only remedy with respect to any dissatisfaction with (i) the Twitch Service, (ii) any term of these Terms of Service, (iii) any policy or practice of Twitch in operating the Twitch Service, or (iv) any content or information transmitted through the Twitch Service, is to terminate your account and discontinuing use of any and all parts of the Twitch Service. In serious cases of breach of these Terms of Service (for example, infringement of Twitch's intellectual property rights or actions causing it financial loss), Twitch may consider it appropriate to take legal action against you (though we will try to resolve matters amicably with you if possible).

## 17. Indemnification.

The following section only applies to you if you are resident in the USA or elsewhere in the world (but does not apply if you are a consumer resident in the European Union):

You agree to indemnify, defend, and hold harmless Twitch, its affiliated companies, contractors, employees, agents and its third-party suppliers, licensors, and partners from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your use or misuse of the Twitch Service, any Content you post, store or otherwise transmit in or through the Twitch Service, your violation of the rights of any third party, any violation by you of these Terms of Service, or any breach of the representations, warranties, and covenants made by you herein. Twitch reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Twitch, and you agree to cooperate with Twitch's defense of these claims. Twitch will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it. If you are a Broadcaster, the forgoing indemnity includes, without limitation, any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your Promotions or Broadcaster Content.

## 18. Disclaimers; No Warranties.

The following section only applies to you if you are resident in the USA or elsewhere in the world (but does not apply if you are a consumer resident in the European Union):

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (A) THE TWITCH SERVICE AND THE CONTENT AND MATERIALS CONTAINED THEREIN ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN A WRITING BY TWITCH; (B) TWITCH, AND ITS AFFILIATES, PARTNERS, AND SUPPLIERS ("TWITCH PARTIES") DISCLAIM ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS TO THE TWITCH SERVICE INCLUDING ANY INFORMATION, CONTENT OR MATERIALS CONTAINED THEREIN; (C) TWITCH DOES NOT REPRESENT OR WARRANT THAT CONTENT OR MATERIALS ON THE TWITCH SERVICE ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE; (D) TWITCH IS NOT RESPONSIBLE FOR TYPOGRAPHICAL ERRORS OR OMISSIONS RELATING TO TEXT OR PHOTOGRAPHY; AND (E) WHILE TWITCH ATTEMPTS TO MAKE YOUR ACCESS AND USE OF THE TWITCH SERVICE SAFE, TWITCH CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE TWITCH SERVICE OR OUR SERVER(S) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, AND THEREFORE, YOU SHOULD USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES FROM ANY DOWNLOAD. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM TWITCH OR THROUGH THE TWITCH SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. YOU EXPRESSLY ACKNOWLEDGE THAT AS USED IN THIS SECTION 18, THE TERM "TWITCH" INCLUDES TWITCH'S OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, LICENSORS AND SUBCONTRACTORS.

## 19. Limitation of Liability and Damages.

### **Users in the USA and rest of the world (non-EU):**

The following section only applies to you if you are resident in the USA or elsewhere in the world (but does not apply if you are a consumer resident in the European Union).

#### **a. Limitation of Liability.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (A) IN NO EVENT SHALL TWITCH OR THE TWITCH PARTIES BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE THE TWITCH SERVICE, THE CONTENT OR THE MATERIALS, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE BY USER ON ANY INFORMATION OBTAINED FROM TWITCH, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO TWITCH'S RECORDS, PROGRAMS OR SERVICES; AND (B) IN NO EVENT SHALL THE AGGREGATE LIABILITY OF TWITCH, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF OR INABILITY TO USE THE TWITCH SERVICE EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THE TWITCH SERVICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM OR ONE HUNDRED DOLLARS, WHICHEVER IS GREATER.

#### **b. Reference Sites.**

THESE LIMITATIONS OF LIABILITY ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY YOU BY REASON OF ANY PRODUCTS OR SERVICES SOLD OR PROVIDED ON ANY REFERENCE SITES OR OTHERWISE BY THIRD PARTIES OTHER THAN TWITCH AND RECEIVED THROUGH OR ADVERTISED ON THE TWITCH SERVICE OR RECEIVED THROUGH ANY REFERENCE SITES.

#### **C. Basis of the Bargain.**

YOU ACKNOWLEDGE AND AGREE THAT TWITCH HAS OFFERED THE TWITCH SERVICES, BROADCASTER CONTENT, MATERIALS AND OTHER CONTENT AND INFORMATION, SET ITS PRICES, AND ENTERED INTO THESE TERMS OF SERVICE IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND TWITCH, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND TWITCH. TWITCH WOULD NOT BE ABLE TO PROVIDE THE TWITCH SERVICE TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

#### **d. Users in the European Union.**

The following section only applies to you if you are a consumer resident in the European Union. Neither Twitch and its affiliates and partners in all cases, nor you (if you are an individual customer), will be responsible for: (i) losses that were not caused by any breach on their or your part; (ii) any indirect or consequential losses (including loss of profits, revenue, contracts, anticipated savings, data, goodwill or wasted expenditure); or (iii) any indirect or consequential losses that were not foreseeable by both you and us when the Terms of Service were agreed or updated as applicable. If you are a Subscribing Organization (as defined in section 1 of these Terms of Service) then you are not granted any rights under this section.

## 20. Applicable Law and Venue

PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH TWITCH AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM TWITCH.

You and Twitch agree to arbitrate any dispute arising from these Terms of Service or your use of the Twitch Service, except that you and Twitch are not required to arbitrate any dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents. ARBITRATION PREVENTS YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL. You and Twitch agree that you will notify each other in writing of any dispute within thirty (30) days of when it arises. Notice to Twitch shall be sent to Justin.tv, Inc. dba Twitch, Attn: Legal, 225 Bush Street, 9th Floor, San Francisco, CA 94104. You and Twitch further agree: to attempt informal resolution prior to any demand for arbitration; that any arbitration will occur in Santa Clara County, California; that arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of JAMS; and that the state or federal courts in Santa Clara County, California have exclusive jurisdiction over any appeals of an arbitration award and over any suit between the parties not subject to arbitration. Other than class procedures and remedies discussed below, the arbitrator has the authority to grant any remedy that would otherwise be available in court. Any dispute between the parties will be governed by this Agreement and the laws of the State of California and applicable United States law, without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction. Whether the dispute is heard in arbitration or in court, you and Twitch will not commence against the other a class action, class arbitration or other representative action or proceeding.

## 21. Miscellaneous.

### a. Notice.

Twitch may provide you with notices, including those regarding changes to Twitch's terms and conditions, by email, regular mail or postings on the Twitch Service. Notice will be deemed given twenty-four hours after email is sent, unless Twitch is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to a postal address, if provided by you through the Twitch Service. In such case, notice will be deemed given three days after the date of mailing. Notice posted on the Twitch Service is deemed given 30 days following the initial posting.

### b. Waiver.

The failure of either you or us to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms of Service will be effective only if in writing and signed by the relevant party.

### c. Severability.

If any provision of these Terms of Service or any guidelines is held to be unlawful, void, or for any reason unenforceable, then for both you and us that provision will be limited or eliminated from these Terms of Service to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

### d. Assignment.

These Terms of Service and related Guidelines, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Twitch without restriction. Any assignment attempted to be made in violation of this Terms of Service shall be void.

### e. Survival.

Upon termination of these Terms of Service, any provision which, by its nature or express terms should survive, will survive such termination or expiration, including, but not limited to, Sections 7, 8, 11(b)(ii), 11(c), 11(d), 12, 15-20.

### f. Headings.

The heading references herein are for convenience purposes only, do not constitute a part of these Terms of Service, and will not be deemed to limit or affect any of the provisions of it.

### g.

#### Entire Agreement.

The Terms of Service, together with the Terms of Sale, the Privacy Policy and the Guidance, is the entire agreement between you and Twitch relating to the subject matter herein and will not be modified except in writing, signed or otherwise agreed to by both parties, or by a change to these Terms of Service or Guidelines made by Twitch as set forth in Section 5 above.

### h. Claims.

If you are a consumer resident in the European Union and you disagree with the above, we encourage you contact us as soon as possible after you start using the Twitch Service at [legal@twitch.tv](mailto:legal@twitch.tv) since otherwise they will be binding on you after a reasonable time period (usually 30 days unless there are exceptional circumstances).

The following section only applies to you if you are resident in the USA or elsewhere in the world (but does not apply if you are a consumer resident in the European Union):

YOU AND TWITCH AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE TWITCH SERVICE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

### i. Disclosures.

The Twitch Service is offered by Twitch Interactive, Inc., located at: 225 Bush Street, 9th Floor, San Francisco, CA 94104 and email: [help@twitch.tv](mailto:help@twitch.tv). If you are a California resident, you may have this same information emailed to you by sending a letter to the foregoing address with your email address and a request for this information.

### j. Requests for User Information

All requests for information or documents must be made using the appropriate level of legal process, and must be properly served on Twitch via the Corporation Service Company (CSC), Twitch's national registered agent. Please find below the California address for CSC (the CSC office in your jurisdiction may be located through the Secretary of State's website).

Twitch Interactive, Inc.  
c/o Corporation Service Company  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento CA 95833

Please note that Twitch does not accept requests for information or documents, or service of process, via e-mail or fax and will not respond to such requests. All requests must include the information you may have that will help us identify the relevant records (e.g. the Twitch username: <http://www.twitch.tv/username>), the specific information requested, and its relationship to your investigation. Please also note that limiting your request to the relevant records (e.g. a limited time period) will facilitate efficient processing of your request.



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# **Exhibit 7**



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## In-Game Item Trading Update

Article posted by Valve · July 13, 2013

In 2011, we added a feature to Steam that enabled users to trade in-game items as a way to make it easier for people to get the items they wanted in games featuring in-game economies.

Since then a number of gambling sites started leveraging the Steam trading system, and there's been some false assumptions about our involvement with these sites. We'd like to clarify that we have no business relationships with any of these sites. We have never received any revenue from them. And Steam does not have a system for turning in-game items into real world currency.

These sites have basically pieced together their operations in a two-part fashion. First, they are using the OpenID API as a way for users to prove ownership of their Steam accounts and items. Any other information they obtain about a user's Steam account is either manually disclosed by the user or obtained from the user's Steam Community profile (when the user has chosen to make their profile public). Second, they create automated Steam accounts that make the same web calls as individual Steam users.

Using the OpenID API and making the same web calls as Steam users to run a gambling business is not allowed by our API nor our user agreements. We are going to start sending notices to these sites requesting they cease operations through Steam, and further pursue the matter as necessary. Users should probably consider this information as they manage their in-game item inventory and trade activity.

-Erik Johnson

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# **Exhibit 8**

Twitch [Follow](#)

Twitch is the world's leading video platform and community for gamers. For support, please contact [@TwitchSupport](#).

Jul 13, 2016

## Twitch and third-party terms of service and user agreements

Today Valve released an announcement clarifying the intended use of Steam's trading system and OpenID API. Valve specifically notes that using "the OpenID API and making the same web calls as Steam users to run a gambling business is not allowed by our API nor our user agreements."

As a reminder, per Twitch's Terms of Service, broadcasters are not permitted to stream content that breaks the terms of service or user agreements of third-parties. As such, content in which the broadcaster uses or promotes services that violate Valve's stated restrictions is prohibited on Twitch. Our Rules of Conduct lists other examples such as playing pirated games and playing on unauthorized private servers.

